

REFERENCE TITLE: department of mining; conforming changes

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2744

Introduced by
Representatives McGuire, Chabin, Lujan, Rios P: Alvarez, Brown, Cajero
Bedford, Campbell CH, Campbell CL, DeSimone, Gallardo, Konopnicki, Lopes,
Lopez, Miranda B, Sinema, Ulmer, Senator Rios

AN ACT

AMENDING SECTIONS 11-830, 23-491, 26-305.02, 26-343, 27-101 AND 27-101.01, ARIZONA REVISED STATUTES; REPEALING SECTIONS 27-103 AND 27-104, ARIZONA REVISED STATUTES; AMENDING SECTIONS 27-105 AND 27-106, ARIZONA REVISED STATUTES; REPEALING SECTION 27-107, ARIZONA REVISED STATUTES; AMENDING SECTION 27-108, ARIZONA REVISED STATUTES; REPEALING SECTION 27-109, ARIZONA REVISED STATUTES; AMENDING SECTIONS 27-110, 27-111 AND 27-121, ARIZONA REVISED STATUTES; REPEALING SECTIONS 27-122 AND 27-126, ARIZONA REVISED STATUTES; AMENDING SECTIONS 27-128, 27-129, 27-130, 27-131, 27-235, 27-301, 27-306, 27-411, 27-442, 27-443, 27-444, 27-445, 27-446, 27-447, 27-448, 27-461, 27-901, 27-902, 27-903, 27-904, 27-905, 27-921, 27-922, 27-923, 27-926, 27-927, 27-928, 27-929, 27-930, 27-931, 27-932, 27-933, 27-934, 27-935, 27-951, 27-952, 27-953, 27-954, 27-972, 27-973, 27-976, 27-992, 27-993, 27-996, 27-1021, 27-1022, 27-1023, 27-1024, 27-1025, 27-1201, 27-1202, 27-203, 27-1204, 27-1205, 27-1221, 27-1222, 27-1223, 27-1226, 27-1227, 27-1228, 27-1229, 27-1230, 27-1231, 27-1232, 27-1233, 27-1234, 27-1235, 27-1251, 27-1252, 27-1253, 27-1254, 27-1272, 27-1273, 27-1276, 27-1292, 27-1293, 27-1294, 27-1296, 27-1297, 27-1321, 27-1322, 27-1323, 27-1324, 27-1325, 37-904, AND 41-1372, ARIZONA REVISED STATUTES; REPEALING SECTION 41-3016.21, ARIZONA REVISED STATUTES; CHANGING THE DESIGNATION OF TITLE 27, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, TO "DEPARTMENT OF MINING"; CHANGING THE DESIGNATION OF TITLE 27, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, TO "MINE INSPECTOR"; RELATING TO MINING; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 11-830, Arizona Revised Statutes, is amended to
3 read:

4 11-830. Restriction on regulation; exceptions; aggregate mining
5 regulation; definitions

6 A. Nothing contained in any ordinance authorized by this chapter
7 shall:

8 1. Affect existing uses of property or the right to its continued use
9 or the reasonable repair or alteration thereof for the purpose for which used
10 at the time the ordinance affecting the property takes effect.

11 2. Prevent, restrict or otherwise regulate the use or occupation of
12 land or improvements for railroad, mining, metallurgical, grazing or general
13 agricultural purposes, if the tract concerned is five or more contiguous
14 commercial acres. For the purposes of this paragraph, "mining" has the same
15 meaning prescribed in section 27-301.

16 3. Prevent, restrict or otherwise regulate the use or occupation of
17 land or improvements for agricultural composting, if the tract is five or
18 more contiguous commercial acres. An agricultural composting operation shall
19 notify in writing the board of supervisors and the nearest fire department of
20 the location of the composting operation. If the nearest fire department is
21 located in a city, town or fire district where the agricultural composting is
22 not located, the agricultural composting operation shall also notify in
23 writing the fire district in which the operation is located. Agricultural
24 composting is subject to ~~the provisions of~~ sections 3-112 and 49-141. For
25 the purposes of this paragraph, "agricultural composting" has the same
26 meaning prescribed in section 9-462.01, subsection G.

27 B. A nonconforming business use within a district may expand if such
28 expansion does not exceed one hundred per cent of the area of the original
29 business.

30 C. For the purposes of subsection A, paragraph 2 of this section,
31 mining does not include aggregate mining operations in an aggregate mining
32 operations zoning district established pursuant to this section. The board
33 of supervisors of any county with a population of more than two million
34 persons shall designate and establish the boundaries of an aggregate mining
35 operations zoning district on the petition of at least one hundred persons
36 who reside within one-half mile of an existing aggregate mining
37 operation. In addition, the board of supervisors of any county may
38 establish, in its discretion and on the board's initiative, one or more
39 aggregate mining operations zoning districts. Aggregate mining operations
40 zoning districts may only be located in areas that are inventoried and mapped
41 as areas of known reserves or in areas with existing aggregate mining
42 operations. Subject to subsections E and F of this section, a county and the
43 ~~state mine inspector~~ DIRECTOR OF THE DEPARTMENT OF MINING may jointly adopt,
44 as internal administrative regulations, reasonable aggregate mining
45 operations zoning district standards limited to permitted uses, procedures

1 for approval of property development plans and site development standards for
2 dust control, height regulations, setbacks, days and hours of operation,
3 off-street parking, screening, noise, vibration and air pollution control,
4 signs, roadway access lanes, arterial highway protection and property
5 reclamation for which aggregate mining operations are not otherwise subject
6 to federal, state or local regulation or a governmental contractual
7 obligation. Regulations jointly adopted pursuant to this subsection by the
8 county and the ~~state mine inspector~~ DIRECTOR OF THE DEPARTMENT OF MINING
9 shall not prohibit the activities included in the definition of mine pursuant
10 to section 27-301, paragraph 8 or duplicate, conflict with or be more
11 stringent than applicable federal, state or local laws.

12 D. The board of supervisors of any county that establishes an
13 aggregate mining operations zoning district shall appoint an aggregate mining
14 operations recommendation committee for the district. The committee shall
15 consist of not more than seven operators, or representatives of operators, of
16 active aggregate mining operations in any district within the county and an
17 equal number of private citizens, who are not operators, who are not employed
18 by operators and who do not represent operators, residing within three miles
19 of the boundaries of aggregate mining operations or a proposed aggregate
20 mining operation in the district for which the committee is established. The
21 initial members appointed to the committee shall be deemed the primary
22 members, and the board of supervisors shall appoint no more than five
23 alternate members who represent operators and shall appoint no more than five
24 alternate members who are private citizens. Alternate members may serve at
25 meetings of the committee when a primary member is unable to attend. An
26 aggregate mining operator may serve on more than one committee in the same
27 county. The board of supervisors shall determine the length of terms of
28 members of the committee and shall stagger the initial appointments so that
29 not all members' terms expire at the same time. Members of the committee who
30 no longer qualify for membership as provided by this subsection are subject
31 to removal and replacement by the board of supervisors. The committee shall
32 elect a member who is an aggregate mining operator to serve as chairman for
33 the first year in which the committee is created. For each year thereafter,
34 the chairman shall be elected by the members of the committee with a member
35 who is a private citizen and a member who is an aggregate mining operator
36 serving as chairman in alternate years. The committee is subject to the open
37 meeting requirements of title 38, chapter 3, article 3.1.

38 E. Within ninety days after an aggregate mining operations
39 recommendation committee is established, it shall notify all existing
40 aggregate mining operators in the district of the application of this section
41 and title 27, chapter 3, article 6 to the aggregate mining operation. In
42 addition, the committee shall:

43 1. By a majority vote of all members make recommendations to the board
44 of supervisors for aggregate mining zoning districts and administrative
45 regulations as provided in this section. The board of supervisors may adopt

1 or reject such recommendations but may not make any modifications to the
2 recommendations unless such modification is approved by a majority of the
3 members of the recommendation committee.

4 2. Serve as a forum for mediation of disputes between members of the
5 public and aggregate mining owners or operators. If the committee is unable
6 to resolve a dispute, the committee shall transmit the matter to the ~~state~~
7 ~~mine-inspector~~ DIRECTOR OF THE DEPARTMENT OF MINING, with written findings
8 and recommendations, for further action.

9 3. Hear written complaints filed with the ~~state-mine-inspector~~
10 DIRECTOR OF THE DEPARTMENT OF MINING regarding alleged material deviations
11 from approved community notices for aggregate mining operations and make
12 written recommendations to the ~~state-mine-inspector~~ DIRECTOR pursuant to
13 section 27-446.

14 F. Any administrative regulations adopted by a board of supervisors
15 pursuant to this section shall not be effective until they are approved by
16 the ~~state-mine-inspector~~ DIRECTOR OF THE DEPARTMENT OF MINING. The ~~inspector~~
17 DIRECTOR may disapprove the administrative regulations adopted by the board
18 of supervisors only if they duplicate, conflict with or are more stringent
19 than applicable federal, state or local laws, rules or regulations. If the
20 ~~inspector~~ DIRECTOR disapproves the administrative regulations, the ~~inspector~~
21 DIRECTOR must provide written reasons for the disapproval. The ~~inspector~~
22 DIRECTOR shall not make any modification to the administrative regulations as
23 adopted by the board of supervisors unless the modification is approved by a
24 majority of the members of the board of supervisors.

25 G. A person or entity is subject to ~~the provisions of~~ this chapter if
26 the use or occupation of land or improvements by the person or entity
27 consists of or includes changing, remanufacturing or treating human sewage or
28 sludge for distribution or resale. These activities are not exempt from this
29 chapter under subsection A, paragraph 2 of this section.

30 H. A county shall not require as a condition for a permit or for any
31 approval, or otherwise cause, an owner or possessor of property to waive the
32 right to continue an existing nonconforming outdoor advertising use or
33 structure without acquiring the use or structure by purchase or condemnation
34 and paying just compensation unless the county, at its option, allows the use
35 or structure to be relocated to a comparable site in the county with the same
36 or a similar zoning classification, or to another site in the county
37 acceptable to both the county and the owner of the use or structure, and the
38 use or structure is relocated to the other site. The county shall pay for
39 relocating the outdoor advertising use or structure including the cost of
40 removing and constructing the new use or structure that is at least the same
41 size and height. This subsection does not apply to county rezoning of
42 property at the request of the property owner to a more intensive zoning
43 district.

44 I. For the purposes of this section:

45 1. "Aggregate" has the same meaning prescribed in section 27-441.

1 2. "Aggregate mining" has the same meaning prescribed in section
2 27-441.

3 3. "Aggregate mining operation" means property that is owned, operated
4 or managed by the same person for aggregate mining.

5 4. "Operators" means persons who are actively engaged in aggregate
6 mining operations within the zoning district or proposed zoning district and
7 who have given notice to the ~~state mine inspector~~ DIRECTOR OF THE DEPARTMENT
8 OF MINING pursuant to section 27-303.

9 Sec. 2. Section 23-491, Arizona Revised Statutes, is amended to read:
10 23-491. Definitions

11 In this article, unless the context otherwise requires:

12 1. "Authorized representative" means the elevator chief and elevator
13 inspector employed by the division.

14 2. "Board" means the elevator advisory board established to assist the
15 commission in drafting standards and regulations.

16 3. "Commission" means the industrial commission of Arizona.

17 4. "Conveyance" means an elevator, dumbwaiter, escalator, moving walk,
18 manlift, personnel hoist, material hoist, stage lift and special purpose
19 personnel elevator, excluding conveyances located at mines and subject to
20 regulation and inspection by the ~~state mine inspector~~ DEPARTMENT OF MINING
21 pursuant to ~~the provisions of~~ title 27, chapter 3.

22 5. "Director" means the director of the division of occupational
23 safety and health.

24 6. "Division" means the division of occupational safety and health of
25 the industrial commission.

26 7. "Dumbwaiter" means a hoisting and lowering mechanism with a car of
27 limited capacity and size which moves in guides in a substantially vertical
28 direction and is used exclusively for carrying material.

29 8. "Elevator" means a hoisting and lowering mechanism equipped with a
30 car or platform which moves in guides in substantially vertical direction and
31 which serves two or more floors of a building or structure.

32 9. "Escalator" means a power driven, inclined, continuous stairway
33 used for raising or lowering passengers.

34 10. "Interested party" means the commission and its agents and the
35 owner or operator who has been issued a correction order.

36 11. "Manlift" means a device consisting of a power driven endless belt
37 moving in one direction only and provided with steps or platforms and
38 attached handholds for the transportation of personnel from floor to floor.

39 12. "Material hoist" means a hoist for raising and lowering materials
40 only and prohibiting the hoisting of persons.

41 13. "Moving walk" means a type of passenger carrying device on which
42 passengers stand or walk and in which the passenger carrying surface remains
43 parallel to its direction of motion and is uninterrupted.

44 14. "Owner" or "Operator" means an individual or organization including
45 this state and all political subdivisions of this state who has title to,

controls or has the duty to control the operation of one or more conveyances, but shall not include an individual or organization engaged in mining or metallurgical operations whose operation is subject to regulation and inspection by the ~~state mine inspector~~ DEPARTMENT OF MINING pursuant to ~~the provisions of~~ title 27, chapter 3.

15. "Personnel hoist" means a mechanism for use in connection with the construction, alteration, maintenance or demolition of a building, structure or other work, used for hoisting and lowering workers and materials and equipped with a car that moves on guide members during its vertical movement. The term includes a hoistway of a personnel hoist.

16. "Special purpose personnel elevator" means a passenger, hand powered, counterweighted device or an electric powered device which travels vertically in guides and serves two or more landings.

17. "Stage lift" means a hoisting and lowering mechanism equipped with a platform which moves in guides in a substantially vertical direction and which serves one or more landings.

Sec. 3. Section 26-305.02, Arizona Revised Statutes, is amended to read:

26-305.02. Hazardous materials emergency management program; emergency planning and community right-to-know; duties of the division and director

A. The division is designated the lead agency for developing and implementing a state hazardous materials emergency management program.

B. The director shall appoint a coordinator to work in consultation with designated representatives from the following agencies and departments in the development and implementation of the hazardous materials emergency management program:

1. The department of environmental quality.
2. The department of health services.
3. The department of public safety.
4. The department of transportation.
5. The Arizona department of agriculture.
6. The corporation commission.
7. The industrial commission OF ARIZONA.
8. The office of state fire marshal.

~~9. The office of state mine inspector.~~

9. THE DEPARTMENT OF MINING.

10. The radiation regulatory agency.

11. Other agencies or offices deemed necessary by the director.

C. Nothing in this article shall be construed to change or alter the existing regulatory authority or provisions of law relating to the agencies and departments listed in subsection B of this section.

D. The division is designated as the lead agency for implementing title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499). The director shall plan, program and budget the Arizona emergency

1 response commission activities and administer any monies received under
2 section 26-343, subsection G.

3 Sec. 4. Section 26-343, Arizona Revised Statutes, is amended to read:

4 26-343. Arizona emergency response commission; advisory
5 committee; powers and duties

6 A. The Arizona emergency response commission is established consisting
7 of the director of the division, who shall serve as chairperson, and the
8 directors, or their respective designees, of the department of environmental
9 quality, the department of health services, the department of public safety
10 and the department of transportation.

11 B. An advisory committee to the commission is established consisting
12 of:

13 1. The state fire marshal.

14 2. The chief administrative officer, or the officer's designee, of the
15 following agencies:

16 (a) Arizona department of agriculture.

17 (b) Corporation commission.

18 (c) Industrial commission OF ARIZONA.

19 (d) Radiation regulatory agency.

20 ~~(e) State mine inspector.~~

21 (e) THE DEPARTMENT OF MINING.

22 3. Two representatives nominated by the Arizona fire chiefs'
23 association incorporated or its successor agency. One nominee shall
24 represent a fire department serving a population of two hundred fifty
25 thousand or more persons. One nominee shall represent a fire department or
26 fire district serving a population of less than two hundred fifty thousand
27 persons. The term of appointment is for two years.

28 C. The governor shall appoint four private sector representatives to
29 the advisory committee to the commission after reviewing the recommendations
30 provided by the commission. The governor shall appoint, or reappoint, two of
31 the members each year from the private sector, to serve terms of two
32 years. These members, to the extent practicable, shall have technical
33 expertise in the emergency response field.

34 D. The members of the commission shall serve without compensation but
35 are eligible for reimbursement for travel and other expenses as provided by
36 law. The division and the department of environmental quality shall provide
37 such professional, technical or administrative staff support as necessary to
38 implement and perform the commission duties.

39 E. The commission shall meet as often as necessary and may organize
40 itself into such support committees as necessary to implement this article
41 and title III in this state. The full commission shall meet at least
42 annually. The commission may adopt internal operating rules.

43 F. The commission shall administer this article and the rules adopted
44 under this article. The commission shall administer title III in this state
45 and may conduct whatever activities are necessary to implement this article

1 and title III in this state. The commission is granted all the authority and
2 responsibilities of a state emergency response commission for purposes of
3 title III.

4 G. The commission may procure by contract the temporary or
5 intermittent services of experts or consultants if such services are to be
6 performed on a part-time or fee-for-services basis and do not involve the
7 performance of administrative duties. The commission may also enter into
8 agreements with the federal government, Indian tribes, other states and
9 political subdivisions of this state for the purposes of this article. The
10 commission may also accept on behalf of this state any reimbursement, grant
11 or gift that may become available for purposes of this chapter. The
12 commission shall deposit, pursuant to sections 35-146 and 35-147, any such
13 monies in the emergency response fund.

14 H. The commission shall establish a program of financial grants to
15 local governments funded through the division by appropriations to the
16 emergency response fund. The grants shall be dedicated to and used for local
17 compliance with this article. The commission shall include procedures for
18 applying for the grants and qualifying criteria for awarding the grants.

19 I. The commission shall adopt and may modify, suspend or repeal rules
20 pursuant to title 41, chapter 6. The rules may not be more stringent than
21 title III and the federal regulations adopted under title III, except as
22 specifically authorized in this article. These rules shall implement this
23 chapter and title III in this state. The authority to adopt rules includes
24 establishing:

- 25 1. Procedures for handling public information requests.
- 26 2. Procedures and implementing programs for chemical emergency
27 planning and preparedness.
- 28 3. Community right-to-know program reporting requirements.
- 29 4. Release reporting requirements.

30 J. Commissioners and advisory committee members shall ensure that
31 mandatory hazardous materials training programs for on-scene command
32 personnel that are developed, delivered or managed by their respective
33 agencies, departments or divisions address notification procedures,
34 coordination of services and comprehensive management for protection of the
35 public health during and after a chemical or other toxic fire event. The
36 training shall include notification and coordination with the emergency
37 response unit of the department of environmental quality, the department of
38 public safety, the department of transportation, the radiation regulatory
39 agency, the commission, local emergency planning committees, the department
40 of health services, the division of emergency management, the national
41 response center and the Arizona poison control system. Training shall also
42 include orientation on the state emergency response and recovery plan
43 concerning hazardous materials. Commissioners and advisory committee members
44 shall encourage private companies that deliver similar training in Arizona to
45 include the same curriculum in their programs.

1 Sec. 5. Section 27-101, Arizona Revised Statutes, is amended to read:

2 27-101. Definitions

3 In this article, unless the context otherwise requires:

4 ~~1. "Board" means the board of governors of the department.~~

5 ~~2. 1. "Department" means the department of mines and mineral~~
6 ~~resources~~ MINING.

7 ~~3. 2. "Director" means the director of the department.~~

8 ~~4. 3. "Minerals" includes metals and metallic and nonmetallic~~
9 minerals, except oil and gas.

10 Sec. 6. Section 27-101.01, Arizona Revised Statutes, is amended to
11 read:

12 27-101.01. Department of mining; objectives; director; immunity

13 A. A department of ~~mines and mineral resources~~ MINING is established
14 PURSUANT TO ARTICLE XIX, CONSTITUTION OF ARIZONA.

15 B. The objectives of the department are to promote the development of
16 the mineral resources of this state:

17 1. Through technical and educational processes, including field
18 investigations, public seminars, publications, conferences and mineral
19 displays.

20 2. By providing mining, metallurgical and other technical information
21 and assistance to all persons who are interested in developing the mineral
22 resources of this state.

23 C. THE GOVERNOR SHALL APPOINT A DIRECTOR OF THE DEPARTMENT PURSUANT TO
24 SECTION 38-211 FROM THE NAMES SUBMITTED BY THE SEARCH COMMITTEE UNDER
25 SUBSECTION D OF THIS SECTION. THE DIRECTOR MUST BE A MINING, METALLURGICAL
26 OR GEOLOGICAL ENGINEER WHO GRADUATED FROM AN ACCREDITED SCHOOL, SHALL BE
27 QUALIFIED BY EDUCATION AND EXPERIENCE IN THE MINERALS INDUSTRY AND SHALL
28 POSSESS A CERTIFICATE OF REGISTRATION AS AN ENGINEER OR A GEOLOGIST, ISSUED
29 BY THE STATE BOARD OF TECHNICAL REGISTRATION. THE DIRECTOR IS ELIGIBLE TO
30 RECEIVE COMPENSATION PURSUANT TO SECTION 38-611 AND REIMBURSEMENT OF EXPENSES
31 PURSUANT TO TITLE 38, CHAPTER 4, ARTICLE 2.

32 D. WHEN A VACANCY OCCURS IN THE OFFICE OF THE DIRECTOR, THE GOVERNOR
33 SHALL APPOINT A SEARCH COMMITTEE OF FIVE MEMBERS FOR THE PURPOSE OF
34 SOLICITING AND EVALUATING APPLICANTS AND SUBMITTING UP TO THREE NAMES TO THE
35 GOVERNOR FOR THE POSITION OF DIRECTOR. THE GOVERNOR MAY REQUEST ADDITIONAL
36 NAMES FROM THE COMMITTEE IF NECESSARY. THE GOVERNOR SHALL APPOINT A NEW
37 COMMITTEE FOR EACH SUBSEQUENT VACANCY IN THE POSITION OF DIRECTOR.

38 ~~C. E. Any claim or action against the department, the board of~~
39 ~~governors or any member of the board or~~ the director or any other officer,
40 employee or volunteer of the department in the person's official capacity
41 must be brought against the state of Arizona and not against the department,
42 ~~board, board member,~~ director or officer, employee or volunteer individually.

43 Sec. 7. Repeal

44 Sections 27-103 and 27-104, Arizona Revised Statutes, are repealed.

1 Sec. 8. Section 27-105, Arizona Revised Statutes, is amended to read:
2 27-105. Powers and duties
3 A. The ~~board of governors~~ DIRECTOR shall:
4 1. Establish NECESSARY field offices ~~it deems~~ necessary.
5 2. Prescribe the number of field and office assistants.
6 3. Formulate the program and policies of the department.
7 B. For the purposes of carrying out this article, the ~~board~~ DIRECTOR
8 may:
9 1. Adopt rules for the management of the department.
10 2. Purchase or lease necessary technological and office equipment and
11 pay for the utility service and maintenance for necessary museum, office and
12 storage space.
13 3. Apply for and accept grants, donations, gifts, bequests or legacies
14 of real or personal property, or any other contribution, financial or
15 otherwise, for use in accordance with the direction of the donor, or, in the
16 absence of an express direction, to be disposed of ~~as prescribed by the board~~
17 consistent with this article. Monies received pursuant to this paragraph
18 shall be deposited in a separate account of the ~~mines and mineral resources~~
19 DEPARTMENT OF MINING fund established by section 27-111.
20 4. Accept from the federal or state government, any local government
21 or any of their agencies restricted and unrestricted monies made available to
22 the state for the purposes of this article.
23 5. Enter into cooperative agreements in support of the objectives
24 stated in section 27-101.01, including intergovernmental agreements pursuant
25 to title 11, chapter 7, article 3, with:
26 (a) The federal government and its agencies.
27 (b) International organizations and organizations and agencies of
28 other nations.
29 (c) Agencies and instrumentalities of this state and political
30 subdivisions of this state.
31 (d) Any mining agency created by the law of any other state.
32 (e) Other public and private organizations, foundations, clubs and
33 museums and other entities.
34 6. Contract with persons and public or private organizations to
35 provide or receive services.
36 Sec. 9. Section 27-106, Arizona Revised Statutes, is amended to read:
37 27-106. Annual report
38 A. The ~~board~~ DIRECTOR shall transmit to the governor, not later than
39 August 15 each year, an annual report of the activities of the department
40 during the preceding fiscal year, which shall include ~~the quarterly reports~~
41 ~~of the director and :~~
42 1. A complete financial statement FOR THE DEPARTMENT.
43 2. A STATISTICAL SUMMARY AND REPORT OF ACTIVITIES UNDER ARTICLE 2 OF
44 THIS CHAPTER. THE REPORT SHALL CONTAIN A STATEMENT SHOWING THE NUMBER OF
45 PERSONS EMPLOYED IN EACH MINE AND, SEPARATELY, THE NUMBER OF PERSONS EMPLOYED

1 ABOVE GROUND AND UNDERGROUND, THE NUMBER AND NATURE OF FATAL AND SERIOUS
2 ACCIDENTS THAT OCCURRED IN EACH MINE, THE NUMBER OF INSPECTIONS MADE,
3 COMPLAINTS FILED, INQUESTS ATTENDED, MINES OR MINE WORKINGS ORDERED TO BE
4 VACATED, VIOLATIONS FOUND AND OTHER INFORMATION CONSIDERED TO BE IMPORTANT
5 AND NECESSARY OR DESIRABLE RECOMMENDATIONS.

6 B. The report shall be printed and made available to ~~each member or~~
7 ~~member-elect of~~ the legislature, AS PROVIDED BY SECTION 41-1178, and to
8 MEMBERS OF the public ON REQUEST.

9 Sec. 10. Repeal

10 Section 27-107, Arizona Revised Statutes, is repealed.

11 Sec. 11. Section 27-108, Arizona Revised Statutes, is amended to read:

12 27-108. Powers and duties of director

13 A. The director shall:

14 1. Have charge and control of the work of the department, including
15 field offices.

16 2. Appoint the field and office assistants. The compensation for such
17 assistants shall be as determined pursuant to section 38-611.

18 3. Administer the finances of the department, ~~subject to the~~
19 ~~provisions of law and the rules of the board~~ AS REQUIRED BY LAW.

20 ~~4. Perform other duties the board prescribes.~~

21 B. The director may:

22 1. ~~With the approval of the board,~~ Establish and collect fees for
23 services provided by the department.

24 2. Receive any monies to support the objectives stated in section
25 27-101.01 arising from grants, contracts, contributions, gratuities or
26 reimbursements payable or distributable to this state from the United States,
27 from state, county, municipal or other governmental sources or from private
28 persons or corporations. Monies received pursuant to this paragraph shall be
29 deposited in the ~~mines and mineral resources~~ DEPARTMENT OF MINING fund
30 established by section 27-111.

31 3. Enter into contracts, ~~except as provided by section 27-105.~~

32 4. Acquire the services and expertise of state universities for the
33 purposes of this article at the director's discretion.

34 C. The director must approve all claims for expenses before payment.

35 Sec. 12. Repeal

36 Section 27-109, Arizona Revised Statutes, is repealed.

37 Sec. 13. Section 27-110, Arizona Revised Statutes, is amended to read:

38 27-110. Organization; employees and volunteers; advisory
39 committees; conflict of interest prohibited

40 A. ~~With the approval of the board,~~ The director shall organize the
41 department and may:

42 1. Employ permanent, temporary, part-time and volunteer professional
43 and support staff. ~~The qualifications of employees of the department shall~~
44 ~~be prescribed by the board. The board may authorize the director to AND~~
45 provide for reimbursement of expenses of volunteer support staff.

2. Establish and appoint the members of advisory committees as necessary to assist the operation of the department.

B. Neither the director nor any other officer or employee shall:

1. Possess or acquire a pecuniary interest in any mining property.

2. Act as broker or agent for any purchaser, owner or agent of mining property, equipment or products.

3. Accept any commission or compensation for services rendered in connection with the mining industry.

4. Make an investigation or report on an individual property for evaluation or private use other than in pursuance of ~~his~~ official duties.

Sec. 14. Section 27-111, Arizona Revised Statutes, is amended to read:

27-111. Department of mining fund

A. The ~~mines and mineral resources~~ DEPARTMENT OF MINING fund is established. Monies received from any source by the department shall be deposited, pursuant to sections 35-146 and 35-147, in the ~~mines and mineral resources~~ fund. Monies in the fund are continuously appropriated to the department for purposes of administering this article. The fund includes the following separate accounts:

1. Monies received pursuant to section 27-105, subsection B, paragraphs 3 and 4 shall be credited to a special account in the fund, designated as the department of ~~mines and mineral resources~~ MINING account, to be used by the department in accordance with section 27-105, SUBSECTION B, paragraph 3 or 4, as appropriate.

2. Monies received pursuant to section 27-102, subsection B shall be credited to an account in the fund to be used for the maintenance and operations of the mining and mineral museum.

3. Monies obtained from the sale of publications under section 27-102, subsection A, paragraph 9 shall be credited to the department's printing revolving account in the fund for printing further publications. Monies in the department's printing revolving account that at any time are in excess of twenty thousand dollars shall immediately revert to the state general fund.

B. Monies in the department's printing revolving account up to an amount of twenty thousand dollars and monies in other accounts in the ~~mines and mineral resources~~ DEPARTMENT OF MINING fund are exempt from the provisions of section 35-190 relating to the lapsing of appropriations.

Sec. 15. Section 27-121, Arizona Revised Statutes, is amended to read:

27-121. Mine inspector; deputy

A. The DIRECTOR OF THE DEPARTMENT OF MINING SHALL SERVE AS THE state mine inspector. ~~shall be a resident of this state at least two years before election, not under thirty years of age, and shall have~~ THE DIRECTOR SHALL APPOINT A DEPUTY MINE INSPECTOR WHO HAS been practically engaged in, and acquainted with, mines and mining in this state, and shall have had at least four years' experience in underground mining and three additional years in either underground mining, smelting, open pit mining, or experience in any

industry under the jurisdiction of the ~~state mine inspector~~ DEPARTMENT OF MINING.

B. THE DIRECTOR MAY ASSIGN THE DEPUTY MINE INSPECTOR TO PERFORM THE DUTIES OF THE STATE MINE INSPECTOR AS PRESCRIBED BY LAW.

~~B. No person may be an inspector or deputy inspector while an employee, director or officer of a mining, milling or smelting company.~~

~~C. The inspector, and each deputy, shall devote full time to official duties.~~

~~D. The inspector shall receive an annual salary pursuant to section 41-1904 and necessary traveling expenses when traveling in discharge of official duties.~~

~~E. The mine inspector shall have a seal bearing the words "Mine Inspector, State of Arizona", which shall be affixed to official documents.~~

~~F. Any claim or action against the mine inspector or the inspector's deputies, agents or employees in their official capacity as described in this title shall be brought against the state of Arizona and not against the mine inspector, deputy, agent or employee individually.~~

Sec. 16. Repeal

Sections 27-122 and 27-126, Arizona Revised Statutes, are repealed.

Sec. 17. Section 27-128, Arizona Revised Statutes, is amended to read:

27-128. Inspection of mines; violation; classification

A. The state mine inspector or ~~a~~ deputy inspector shall inspect each mine in the state as frequently as necessary to determine whether any hazardous dust condition exists therein. There shall be a prompt inspection of any mine in which ~~he or a deputy~~ THE inspector has reason to believe a hazardous dust condition exists or with respect to which complaint of a hazardous dust condition has been made as provided in section 27-308. The ~~mine inspector or a deputy~~ inspector shall make recommendations to mine operators as to methods of reducing dust and whenever he finds a hazardous dust condition he shall notify the mine operator thereof. The notice shall be in writing and shall specify a reasonable time within which the dust condition must be remedied. The mine operator shall install within the time specified, and thereafter maintain and operate, dust prevention practices which remedy the hazardous dust condition.

B. If the dust prevention practices are not installed within the time specified in the notice or are not thereafter maintained, the ~~state mine inspector or a deputy~~ inspector shall forthwith order cessation of operations, except for necessary maintenance and repair work, in all parts of the mine in which hazardous dust conditions exist or are produced by operations until the condition is remedied. Written notice of the order shall be given the mine operator and any mine operator who thereafter knowingly fails to obey the order is guilty of a class 2 misdemeanor.

1 Sec. 18. Section 27-129, Arizona Revised Statutes, is amended to read:
2 27-129. Locating abandoned mines; public education

3 A. Subject to legislative appropriation, the ~~state-mine~~ inspector
4 shall establish a program to locate, inventory, classify and eliminate public
5 safety hazards at abandoned mines as defined in section 27-301. The ~~state~~
6 ~~mine~~ inspector shall spend state appropriated monies to locate, inventory,
7 classify and eliminate public safety hazards at abandoned mines on state land
8 first and thereafter any public safety hazards at abandoned mines on land not
9 owned by this state.

10 B. Using reasonable efforts, the ~~state-mine~~ inspector shall attempt to
11 notify in writing the owner, or other responsible party, of an abandoned mine
12 at which a public safety hazard exists of the requirements of section 27-318
13 with respect to abandoned mines.

14 C. The ~~state-mine~~ inspector may establish public education programs to
15 recognize and avoid public safety hazards at abandoned mine sites.

16 D. To accomplish the purposes of this section, the ~~state-mine~~
17 inspector may accept monies for deposit in the state general fund received
18 from any source, including restricted or unrestricted federal funds, gifts
19 and contributions from other governmental agencies, individuals, corporations
20 or other organizations. The state shall separately account for monies that
21 are received pursuant to this subsection and that are deposited in the state
22 general fund.

23 E. The ~~state-mine-inspector~~ DIRECTOR OF THE DEPARTMENT OF MINING may
24 enter into intergovernmental agreements with Indian tribes in the state to
25 extend the abandoned mine program onto tribal lands.

26 Sec. 19. Section 27-130, Arizona Revised Statutes, is amended to read:
27 27-130 Disposal of surplus equipment

28 Notwithstanding any other law, the ~~state-mine~~ inspector may dispose of
29 surplus used mine rescue equipment which the ~~state-mine~~ inspector determines
30 has no value to the state by transferring it to a nonprofit mine rescue
31 organization to be utilized by the organization for a public purpose in this
32 state or by transferring it to a political subdivision of the state.

33 Sec. 20. Section 27-131, Arizona Revised Statutes, is amended to read:
34 27-131. Abandoned mines safety fund; annual report

35 A. Notwithstanding section 27-129, subsection D, the abandoned mines
36 safety fund is established consisting of:

37 1. Gifts, grants and contributions specifically designated for the
38 fund.

39 2. Monies that may be appropriated by the legislature to the fund to
40 match the gifts, grants and contributions based on the preceding year's
41 expenditure report required under subsection D of this section.

42 B. The ~~state-mine-inspector~~ DIRECTOR OF THE DEPARTMENT OF MINING shall
43 administer the fund. Monies in the fund are exempt from lapsing pursuant to
44 section 35-190.

C. Monies in the fund are continuously appropriated to the ~~inspector~~ DEPARTMENT to ensure public safety at abandoned mines on land owned by this state as provided by section 27-129. The ~~inspector~~ DIRECTOR shall use monies in the fund to pay contractors for actual abatement costs to fill, fence or plug shafts and adits and not to pay administrative salaries and other costs. The ~~inspector~~ DIRECTOR shall consult with the state land commissioner to identify and prioritize the abandoned mine sites on state lands to be considered for abatement.

D. ~~Each year~~ The ~~inspector~~ DIRECTOR shall submit an annual report to the joint legislative budget committee on or before December 1 concerning the expenditure of monies from the fund and contributions to the fund during the preceding fiscal year. The report shall itemize each expense paid from the fund and shall describe the actions taken to ensure public safety.

Sec. 21. Section 27-235, Arizona Revised Statutes, is amended to read:
27-235. Offering leases at auction; terms of lease; financial security termination

A. The state land commissioner may offer mineral leases at public auction, after advertising, for state lands on which a mineral exploration permit or mineral lease has been terminated or not been renewed by the lessee or permittee. The commissioner may establish by rule the procedure for conducting the auction, but bidding is limited to a cash bonus to be paid in full before the commissioner executes the lease documents. The land rental and royalty rate are not subject to bidding.

B. Every mineral lease of state lands shall be for a term of twenty years.

C. The lease shall confer the right:

1. To extract and ship minerals from the leased land located within planes drawn vertically downward through the exterior boundary lines of the leased land.

2. To use as much of the surface as required for purposes incident to mining.

3. Of ingress to and egress from other state lands, whether or not leased for purposes other than mining.

D. Every mineral lease of state lands shall provide for:

1. The development and use of the property according to the lessee's general mining plan approved by the commissioner.

2. The fencing of all shafts, exploration holes, adits, tunnels and other dangerous mine workings for the protection of public health and safety and livestock.

3. The construction of necessary improvements and installation of necessary machinery and equipment with the right to remove it upon expiration, termination or abandonment of the lease, if the lessee is not in default of the terms and conditions of the lease.

4. The right of the lessee and the lessee's assigns to transfer the lease.

1 5. Termination of the lease by the commissioner upon written notice
2 specifically setting forth the default for which forfeiture is declared, and
3 preserving the right to cure the default within a stated period of not less
4 than thirty days.

5 E. If financial security is required under this subsection, it shall
6 be in the form of a cash deposit, a certificate of deposit, a surety bond or
7 any other form of financial assurance acceptable to the commissioner. On
8 default, the commissioner may use the proceeds of the financial security for
9 the purposes described in paragraph 1, 2 or 3 of this subsection. Financial
10 security may be required in the following circumstances:

11 1. The commissioner may require financial security to guarantee the
12 payment of all monies due under the lease as royalty to this state.

13 2. The commissioner shall require financial security in a reasonable
14 amount to be fixed by the commissioner conditioned on the lessee's reclaiming
15 the surface of the land described in the lease to a reasonable condition in
16 accordance with the reclamation measures approved by the commissioner. The
17 commissioner may enter into agreements pursuant to title 11, chapter 7,
18 article 3 with the ~~state mine inspector's office~~ DEPARTMENT OF MINING, United
19 States bureau of land management, United States forest service and other
20 agencies that manage public lands and take other appropriate measures to
21 coordinate the review and approval of reclamation plans, including
22 designating a lead agency for reclamation plan review and action. The
23 commissioner shall avoid redundant, inconsistent or contradictory
24 reclamation, inspection, administration, enforcement and financial assurance
25 requirements unless such requirements are necessary as a result of the
26 commissioner's trust obligations.

27 3. The commissioner shall require financial security conditioned on
28 the lessee's prompt payment to the owner or lessee of the surface of the
29 state land described in the lease, or across which the lessee exercises the
30 right of ingress, for any loss to the owner or lessee from damage or
31 destruction caused by the lessee or the lessee's agents or employees to
32 grass, forage, crops or improvements on the land.

33 F. The lessee of any mineral lease who has met the applicable terms
34 and conditions of the lease from the time of issuance to the time of
35 termination, as determined by the commissioner, may terminate the lease at
36 any time during its term by giving the commissioner thirty days' written
37 notice of the termination.

38 Sec. 22. Section 27-301, Arizona Revised Statutes, is amended to read:

39 27-301. Definitions

40 In this chapter, unless the context otherwise requires:

41 1. "Abandoned mine" means a mine where mining operations have been
42 permanently terminated or the operator has complied with section 27-303,
43 subsection C or for which no owner, operator or other claimant of record can
44 be located for a deserted mine site.

2. "Active mine" means a mining operation conducting mining activities on any lands.

3. "Claim" means the portion of mining ground held under federal and local law by one claimant or association, by virtue of one location and record. It includes mining claims and sites deemed abandoned under the federal land policy and management act of 1976 (P.L. 94-579; 90 Stat. 2743).

4. "DEPARTMENT" MEANS THE DEPARTMENT OF MINING.

~~4.~~ 5. "Excavations" or "workings" means any or all parts of a mine excavated or being excavated, including shafts, tunnels, drifts, crosscuts, adits, entries, winzes, raises, stopes, open cuts, and all working places, whether abandoned or in use.

~~5.~~ 6. "Inactive mine" means a mining operation not conducting mining for more than six months or where mining operations have been temporarily suspended or the operator has complied with section 27-303, subsection C.

~~6.~~ 7. "Inspector" means the ~~state mine inspector and except in article 7 of this chapter his deputies~~ DIRECTOR OF THE DEPARTMENT OF MINING, ACTING AS THE STATE MINE INSPECTOR, OR THE DEPUTY STATE MINE INSPECTOR.

~~7.~~ 8. "Mill" means any ore mill, concentrator, sampling works, crushing, grinding or screening plant, appurtenant buildings, shops or storage or loading facility used at and in connection with any mine.

~~8.~~ 9. "Mine" means all lands containing excavations, underground passageways, shafts, tunnels and workings, structures, facilities, equipment, machines or other property including impoundments, retention dams, tailings and waste dumps, on the surface or underground, used in, to be used in or resulting from the work of extracting minerals or other materials, excluding hydrocarbons. Mine includes that portion of an operation which mixes rock, sand, gravel or similar materials with water and cement or with asphalt, provided that the operation is either physically connected to the mine or is so interdependent with the mine as to form one integral enterprise. Mine includes that portion of an operation that is being reclaimed pursuant to chapter 5 or 6 of this title.

~~9.~~ 10. "Miner" means a person who works in a mine.

~~10.~~ 11. "Mining" means those activities conducted to develop or extract materials from a mine including on-site transportation, concentrating, milling, leaching, smelting or other processing of ores or other materials. mining includes mined land reclamation activities regulated pursuant to chapter 5 or 6 of this title.

~~11.~~ 12. "Open pit" means any mine operated on the surface of the earth, including quarries, but excluding sand and gravel operations.

~~12.~~ 13. "Operation" means a mine, mill, smelter, sand and gravel plant or pyrometallurgical or hydrometallurgical operation.

~~13.~~ 14. "Operator" means a natural person, corporation, partnership, association, agent, governmental entity or other public or private organization or representative owning, controlling or managing a mine.

~~14.~~ 15. "Sand and gravel operation" means any operation the principal product of which is sand, gravel, pumice or any other common variety of material.

~~15.~~ 16. "Smelter" means any establishment used for the purpose of pyrometallurgical operations and appurtenant buildings, shops, facilities for the production of steam or electrical power, or equipment used in conjunction with any of the above.

~~16.~~ 17. "Surface mining" means mining conducted on the surface of the land including open pit, strip, dredging, quarrying, leaching, surface evaporation operations, reworking abandoned tailings and dumps and related activities.

~~17.~~ 18. "Underground mine" means a mine in which minerals or other material is extracted from beneath the surface by means of shafts, tunnels or other openings.

Sec. 23. Section 27-306, Arizona Revised Statutes, is amended to read:

27-306. First aid; inspectors as qualified instructors

A. Every operation shall have adequate and proper first aid material as approved by the inspector which shall be available to all employees.

B. No employee or other person shall remove material from first aid boxes or kits at any time except for replacement or use in case of injury.

C. The ~~state-mine~~ inspector and deputy mine inspectors shall be qualified first aid instructors, and shall provide instruction upon request.

Sec. 24. Section 27-411, Arizona Revised Statutes, is amended to read:

27-411. Definitions

In this article, unless the context otherwise requires:

1. "Dust prevention practices" includes ventilation, suction or exhaust methods of removing dust, wet methods for settling dust, and the use of respirators when the condition or exposure is temporary or intermittent, and other means of removing or settling dust from mine air as approved by the ~~state-mine~~ inspector.

2. A "hazardous dust or gas condition" shall exist when the breathing zone of an employee while engaged in the performance of his work contains higher concentration limits of toxic dust and fumes, mineral dusts, and gases than specified ~~by the state-mine inspector~~ in the rules ~~and regulations~~ OF THE DEPARTMENT. Dust counts shall be determined in accordance with techniques prescribed by the inspector and shall be made when necessary.

3. "Respirators" means only those respirators approved by the United States bureau of mines or which may be approved hereafter by the United States bureau of mines and by the ~~state-mine~~ inspector.

4. "Breathing zone", in the case of persons wearing respirators, is the air space created after the passage of air through the protective device.

1 Sec. 25. Section 27-442, Arizona Revised Statutes, is amended to read:

2 27-442. Aggregate mining operations; community notice;
3 application

4 A. An owner or operator of an aggregate mining operation shall not
5 conduct any aggregate mining until it has an approved community notice
6 pursuant to section 27-445, except that an owner or operator of an existing
7 aggregate mining operation may continue the operation if a community notice
8 is filed as provided by subsection H of this section.

9 B. An owner or operator of an aggregate mining operation shall not
10 undertake a major modification of an approved community notice until a major
11 modification application is approved by the ~~state mine~~ inspector pursuant to
12 section 27-445.

13 C. The owner or operator of a new aggregate mining operation shall
14 file an application for a community notice with the inspector containing:

15 1. The name and mailing address of the aggregate mining operation.

16 2. The name and mailing address of the owner or operator of the
17 operation.

18 3. The name, mailing address and telephone number of the designated
19 community representative or representatives for the operation.

20 4. A statement describing the mining activities to be conducted at the
21 operation.

22 5. The amount of acreage of the operation and a map showing the
23 location of the major process facilities.

24 6. Each type of major equipment to be used in the operation.

25 7. The approximate date when the operation will start.

26 8. A description and location of access routes to be used to and from
27 the operation site during normal hours and nonemergency conditions.

28 9. The normal operating hours of the operation to be maintained during
29 nonemergency conditions, unless the inspector authorizes a temporary variance
30 from normal operating hours.

31 10. A description of measures the owner or operator will use to
32 moderate, to the extent economically practicable at the site, any adverse
33 physical effects on the residential property owners who are notified pursuant
34 to section 27-444.

35 D. An owner or operator who owns or leases the land of the operation
36 may submit a joint application for a community notice with one or more
37 lessees or sublessees who are also operating an aggregate mining operation on
38 the same property. A joint application for a community notice must
39 separately list the information required pursuant to subsection C of this
40 section by each owner or operator of an aggregate mining operation. Owners
41 or operators of aggregate mining operations who received approval for a joint
42 application for a community notice may also file a joint application on that
43 approved community notice for major and minor modifications.

1 E. The owner or operator may propose a major or minor modification by
 2 filing an application with the inspector containing the text of the community
 3 notice with the proposed changes noted in the text.

4 F. Within fourteen days after receiving an application for a community
 5 notice for a new aggregate mining operation or major modification, the
 6 inspector shall notify the applicant if the community notice application
 7 contains the information required by subsection C of this section or if the
 8 major modification application is complete pursuant to subsection E of this
 9 section. If the inspector fails to notify the applicant within fourteen
 10 days, the application is considered to be complete.

11 G. The owner or operator must file an application for a minor
 12 modification to an approved community notice with the ~~state-mine~~
 13 inspector. Minor modifications take effect on filing, unless a later
 14 effective date is designated in the application. Applications for minor
 15 modifications are not subject to sections 27-443, 27-444 and 27-445.

16 H. For purposes of having an approved community notice, within ninety
 17 days after an aggregate mining operations zoning district is established
 18 pursuant to section 11-830, the owner or operator of an existing aggregate
 19 mining operation must file with the ~~state-mine~~ inspector a community notice,
 20 which is not subject to sections 27-443 and 27-444. The community notice
 21 shall contain all the information required by subsection C of this section,
 22 except paragraph 7, for its aggregate mining operation. Owners or operators
 23 of existing aggregate mining operations may submit a joint application for a
 24 community notice pursuant to subsection D of this section.

25 Sec. 26. Section 27-443, Arizona Revised Statutes, is amended to read:

26 27-443. Application fee; aggregate community notice fund

27 A. The inspector shall adopt by rule an application fee for a
 28 community notice for a new aggregate mining operation and for a major
 29 modification of an approved community notice. The ~~state-mine~~ inspector shall
 30 collect an application fee established by rule from each owner or operator
 31 who applies pursuant to section 27-442 for a community notice for a new
 32 aggregate mining operation or for a major modification of an approved
 33 community notice. The inspector shall deposit, pursuant to sections 35-146
 34 and 35-147, the monies collected from applicants in the aggregate community
 35 notice fund.

36 B. The aggregate community notice fund is established. The ~~state-mine~~
 37 ~~inspector~~ DIRECTOR OF THE DEPARTMENT OF MINING shall administer the
 38 fund. Monies in the fund are continuously appropriated to the ~~state-mine~~
 39 ~~inspector~~ DEPARTMENT for the purpose of processing community notice
 40 applications and to conduct public meetings pursuant to this article. On
 41 notice from the ~~inspector~~ DIRECTOR, the state treasurer shall invest and
 42 divest monies in the fund as provided by section 35-313, and monies earned
 43 from investment shall be credited to the fund. Monies in the fund are exempt
 44 from the provisions of section 35-190 relating to lapsing of appropriations.

1 Sec. 27. Section 27-444, Arizona Revised Statutes, is amended to read:

2 27-444. Community notice; public meeting

3 A. Within twenty-one days after the ~~state-mine~~ inspector notifies an
4 owner or operator of an aggregate mining operation that the application for a
5 community notice for a new aggregate mining operation or a major modification
6 for an approved community notice is complete, or within twenty-one days after
7 the application is considered to be complete, the owner or operator shall
8 send by certified mail a copy of the community notice:

9 1. To each residential property owner, as shown on the current
10 property tax roll, within a one-half mile radius of the aggregate mining
11 operation. The owner or operator shall submit the list of notified
12 residential property owners to the inspector. The community notice shall
13 include a statement that the property owner may request the state mine
14 inspector to hold a public meeting and may submit written comments as
15 provided by this section.

16 2. To the aggregate mining operations recommendation committee for the
17 district in which the operation is located.

18 3. If the operation is located in a county in which a multi-county
19 water conservation district is established pursuant to title 48, chapter 22,
20 to the multi-county water conservation district.

21 B. If there is sufficient public interest, the inspector shall
22 schedule and conduct a public meeting within forty-five days after the
23 community notice for a new aggregate mining operation or major modification
24 is filed with the inspector. The inspector shall give at least fifteen days'
25 notice of the meeting by filing the notice in the office of the secretary of
26 state and by mail to the residential property owners who requested the public
27 meeting pursuant to subsection A, paragraph 1.

28 C. The inspector or an employee of the ~~inspector~~ DEPARTMENT shall
29 conduct any public meeting on a community notice. The aggregate mining
30 operation's designated representative shall attend and respond to questions
31 relating to information in the community notice. If a notified residential
32 property owner cannot attend the public meeting, the owner may submit written
33 comments to the inspector before the meeting regarding the community
34 notice. The inspector or the ~~inspector's~~ employee and the aggregate mining
35 operator's designated representative shall receive and consider comments from
36 persons attending the meeting and the written comments submitted before the
37 meeting.

38 Sec. 28. Section 27-445, Arizona Revised Statutes, is amended to read:

39 27-445. Approval of community notice or major modification

40 A. The ~~state-mine~~ inspector shall approve or disapprove a community
41 notice for a new aggregate mining operation or major modification within
42 sixty days after the notice is filed by the owner or operator of the
43 aggregate mining operation.

1 B. The inspector shall approve the community notice for a new
2 aggregate mining operation or a major modification if:

3 1. The notice filed with the inspector contains the information
4 required by section 27-442, subsection C or the major modification filed with
5 the inspector is complete pursuant to section 27-442, subsection E.

6 2. The fee prescribed in section 27-443 is paid.

7 3. The community notice or major modification filed with the inspector
8 is mailed to property owners as required by section 27-444, subsection A.

9 4. The designated community representative attends and responds to
10 questions if a public meeting is held pursuant to section 27-444, subsections
11 B and C.

12 C. If the inspector disapproves a community notice or major
13 modification, the inspector must include with the disapproval a written
14 explanation stating the reasons for denial, including recommendations for
15 correcting the unacceptable parts of the community notice or major
16 modification.

17 D. Community notices for existing aggregate mining operations filed
18 pursuant to section 27-442, subsection H are considered to be approved on
19 submission to the inspector.

20 E. The owner or operator of any aggregate mining operation shall
21 operate according to an approved original or modified community notice.

22 Sec. 29. Section 27-446, Arizona Revised Statutes, is amended to read:
23 27-446. Claims of deviation from an approved community notice

24 A. After a community notice is approved by the ~~state-mine~~ inspector, a
25 residential property owner who resides within one-half mile of the boundaries
26 of the aggregate mining operation may submit a written complaint to the
27 designated community representative that the operation has materially
28 deviated from the approved community notice, specifying the community notice
29 provision that is in question and the nature of the material deviation.

30 B. If the aggregate mining operation does not address the complaint to
31 the satisfaction of the residential property owner within thirty days after
32 receiving the complaint, the notified residential property owner may file the
33 same complaint with the inspector with a statement that the aggregate mining
34 operation has not addressed the complaint to the property owner's
35 satisfaction.

36 C. In counties that have established an aggregate mining operations
37 recommendation committee pursuant to section 11-830, the inspector shall
38 request the committee to hear the complaint. The committee shall advise the
39 inspector within thirty days in writing of its findings and recommendations
40 regarding the complaint. The inspector shall render a decision on the
41 complaint within thirty days after receiving the committee's
42 recommendation. The inspector shall notify, in writing, the owner or
43 operator of the aggregate mining operation, the complainant and the committee
44 of the decision.

1 Sec. 30. Section 27-447, Arizona Revised Statutes, is amended to read:

2 27-447. Inspection and enforcement

3 A. The ~~state-mine~~ inspector may enter and inspect any aggregate mining
4 operation to determine compliance with an approved community notice.

5 B. If the inspector determines that a person is violating this
6 article, an approved community notice or aggregate mining operations zoning
7 district standards regulation adopted by a county and approved by the state
8 mining inspector pursuant to section 11-830, the inspector may issue an order
9 requiring compliance either immediately if the violation is causing an
10 imminent and substantial danger to the public or within a stated period of
11 time. A compliance order must state with reasonable specificity the nature
12 of the community notice violation, a reasonable amount of time for
13 compliance, if applicable, and the right to a hearing. The inspector shall
14 transmit the compliance order to the alleged violator either by certified
15 mail, return receipt requested, or by hand delivery. At the inspector's
16 request, the attorney general may file an action to enforce orders issued
17 under this section after the order becomes final. The action must be filed
18 in the superior court in the county in which the alleged violation occurred
19 or in which the inspector maintains an office.

20 C. The inspector may suspend, withdraw or revoke a community notice
21 approval if the inspector determines that the aggregate mining operation is
22 in violation of an approved community notice. Any action taken under this
23 subsection must comply with the requirements of title 41, chapter 6, article
24 10 and section 41-1009, subsection E.

25 D. If the inspector has reason to believe that a person is violating
26 this article or an approved community notice or aggregate mining operations
27 zoning district standards regulation adopted by a county and approved by the
28 inspector pursuant to section 11-830 or that a person is causing an imminent
29 and substantial danger to the public safety, the inspector, through the
30 attorney general, may request a temporary restraining order, a preliminary
31 injunction or any other relief necessary to protect the public safety without
32 regard to whether the person has requested a hearing. An action filed
33 pursuant to this subsection must be brought in the superior court in the
34 county in which the alleged violation occurred or in which the inspector
35 maintains an office.

36 Sec. 31. Section 27-448, Arizona Revised Statutes, is amended to read:

37 27-448. Sand and gravel safety rules

38 A. All sand and gravel operations shall be conducted with due regard
39 to safety. The ~~inspector~~ DIRECTOR OF THE DEPARTMENT OF MINING shall adopt
40 rules to carry out the provisions of this section.

41 B. Article 5 of this chapter applies to sand and gravel operations.

42 Sec. 32. Section 27-461, Arizona Revised Statutes, is amended to read:

43 27-461. Definitions

44 In this article, unless the context otherwise requires:

1 1. "Inspector" means the DIRECTOR OF THE DEPARTMENT OF MINING, ACTING
2 AS state mine inspector.

3 2. "Interested parties" means all persons who have filed written
4 notice with the inspector of their desire to receive the notices provided for
5 in this article.

6 Sec. 33. Section 27-901, Arizona Revised Statutes, is amended to read:

7 27-901. Definitions

8 In this chapter, unless the context otherwise requires:

9 1. "DEPARTMENT" MEANS THE DEPARTMENT OF MINING.

10 ~~1-~~ 2. "Division" means the division of mined land reclamation in the
11 ~~office of the state mine inspector~~ DEPARTMENT OF MINING.

12 ~~2-~~ 3. "Existing exploration operation" means an exploration operation
13 that is ongoing as of July 1, 1996.

14 ~~3-~~ 4. "Existing mining unit" means a mining unit, other than a new
15 mining unit, that continued operations after January 1, 1986.

16 ~~4-~~ 5. "Exploration operations" means activities that create surface
17 disturbances outside a mining facility and that are conducted to determine
18 the presence, location, extent, depth or grade of minerals, including
19 constructing access roads and drill pads.

20 ~~5-~~ 6. "Inactive mining unit" means a mining unit that has not been
21 operated after January 1, 1986 and for which there is a current identifiable
22 owner or operator other than the federal or state government.

23 ~~6-~~ 7. "Inspector" means THE DIRECTOR OF THE DEPARTMENT OF MINING,
24 ACTING AS the state mine inspector, OR THE DEPUTY MINE INSPECTOR.

25 ~~7-~~ 8. "Maintenance" means an activity to preserve or repair the
26 function of previously disturbed land, including grading roads, repairing
27 berms or dams and dredging sedimentation basins.

28 ~~8-~~ 9. "Mineral" means any metalliferous material extracted from the
29 earth, including gold, silver, copper, molybdenum, zinc and lead and other
30 materials that are used as feedstocks in producing metalliferous materials.

31 ~~9-~~ 10. "Mining facility" means property that is owned, operated or
32 managed by the same person to develop, mine, concentrate or leach minerals
33 and associated mineral recovery activities but does not include smelting,
34 refining, fabricating or other metal processing facilities and materials
35 associated with those facilities. Property that is not contiguous but is
36 within the same geographical area and operated as a single mining complex is
37 considered to be a single mining facility.

38 ~~10-~~ 11. "Mining unit" means an individual portion of a mining facility
39 that encompasses one or more surface disturbances.

40 ~~11-~~ 12. "New exploration operation" means an exploration operation
41 that begins after the effective date of the initial rules adopted pursuant to
42 this chapter.

43 ~~12-~~ 13. "New mining unit" means a mining unit at which surface
44 disturbances begin after the effective date of the initial rules adopted
45 pursuant to this chapter.

~~13.~~ 14. "Reclamation" means measures that are taken on surface disturbances at exploration operations and mining units to achieve stability and safety consistent with post-mining land use objectives specified in the reclamation plan.

~~14.~~ 15. "Soil" means topsoil, suitable substrata or other plant growth media that will sustain vegetation.

~~15.~~ 16. "Stability" means the condition of land with respect to its erosion potential and ability to withstand seismic activity.

~~16.~~ 17. "Surface disturbance" means clearing, covering or moving land by means of mechanized earth-moving equipment for mineral exploration, development and production purposes but does not include surveying, assessment and location work, seismic work, maintenance and other such activities that create a de minimis disturbance.

Sec. 34. Section 27-902, Arizona Revised Statutes, is amended to read:

27-902. Division of mined land reclamation; coordination of programs and activities

A. The ~~state mine inspector~~ DIRECTOR OF THE DEPARTMENT OF MINING shall establish a division of mined land reclamation and employ staff who have the necessary and appropriate experience in mining and reclaiming mined lands.

B. This chapter does not replace or duplicate provisions of title 49 that regulate exploration and mining operations to protect public health and the environment.

C. The requirements of a reclamation plan under this chapter, a closure plan for the same mining unit required under title 49, chapter 2, article 3 and other provisions and requirements of title 49 and this title, including financial assurance requirements, shall not be redundant, inconsistent or contradictory. This chapter does not supersede the closure plan requirements of title 49, chapter 2, article 3.

Sec. 35. Section 27-903, Arizona Revised Statutes, is amended to read:

27-903. Exemption for state lands; agreements for coordination with other governmental agencies and landowners

A. This chapter does not apply to any activity that occurs on state land and that is regulated pursuant to chapter 2, article 3, 4 or 5 of this title.

B. The ~~state mine inspector~~ DIRECTOR OF THE DEPARTMENT OF MINING may enter into agreements pursuant to title 11, chapter 7, article 3 with the state land department, United States bureau of land management, United States forest service and other agencies that manage public lands and take other appropriate measures to coordinate the review and approval of reclamation plans, including designating a lead agency for reclamation plan review and action. The ~~inspector~~ DIRECTOR shall avoid redundant, inconsistent or contradictory reclamation, inspection, administration, enforcement and financial assurance requirements.

1 Sec. 36. Section 27-904, Arizona Revised Statutes, is amended to read:
2 27-904. Rules; contributions

3 A. The ~~state-mine-inspector~~ DIRECTOR OF THE DEPARTMENT OF MINING shall
4 adopt rules consistent with this chapter for the reclamation of surface
5 disturbances at exploration operations and mining units and for the
6 administration of this chapter.

7 B. To accomplish the purposes of this section, the ~~state-mine~~
8 ~~inspector~~ DIRECTOR may accept monies for deposit in the state general fund
9 received from any source, including restricted or unrestricted federal funds,
10 gifts and contributions from other governmental agencies, individuals,
11 corporations or other organizations. The state shall separately account for
12 monies received pursuant to this subsection that are deposited in the state
13 general fund.

14 Sec. 37. Section 27-905, Arizona Revised Statutes, is amended to read:
15 27-905. Certificate of disclosure of violations; remedies;
16 definition

17 A. The following persons shall file a certificate of disclosure with
18 the division of mined land reclamation as prescribed by this section:

19 1. A person who is engaged in an activity subject to regulation under
20 this chapter and who has been convicted of a felony involving laws related to
21 mined land reclamation within the five year period immediately preceding
22 execution of the certificate.

23 2. A person who is engaged in an activity subject to regulation under
24 this chapter and who is or has been subject in any civil proceeding to an
25 injunction, decree, judgment or permanent order of any state or federal court
26 within the five year period immediately preceding the execution of the
27 certificate that involved a violation of laws of that jurisdiction relating
28 to mined land reclamation.

29 B. The certificate of disclosure prescribed by this section shall
30 contain the following:

31 1. Identification of the person, including present full name, all
32 prior names or aliases, full birth name, present house address and all prior
33 addresses for the immediately preceding five year period, date and place of
34 birth and social security number.

35 2. The nature and description of each conviction or judicial action,
36 the date and place, the court and public agency involved, and the file or
37 cause number of the case.

38 3. A written declaration that each signer swears to its contents under
39 penalty of perjury.

40 C. The certificate of disclosure submitted on behalf of a corporation
41 shall be executed by any two executive officers or directors of the
42 corporation.

43 D. Initial certificates shall be delivered to the division within
44 ninety days after the person first becomes subject to the disclosure
45 requirements of this section. Certificates shall be filed annually

thereafter within ninety days after the close of the person's fiscal year as reported on the initial certificate.

E. By February 1 of each year, the ~~state mine inspector~~ **DIRECTOR OF THE DEPARTMENT OF MINING** shall provide the attorney general with a list of all persons who were convicted of the crimes or who are the subject of the judicial actions described in subsection A of this section, as indicated from the certificates of disclosure filed during the preceding year.

F. In lieu of the certificate of disclosure prescribed by this section, a corporation may submit to the division copies of annual reports filed with the securities and exchange commission pursuant to section 13 or 15(d) of the securities exchange act of 1934 (15 United States Code section 78), commonly known as a "10-K form", within ninety days after filing the annual report. The initial submission shall include 10-K forms for the preceding five years.

G. A person who contributes information for a certificate of disclosure and who makes an untrue statement of material fact concerning the requirements of subsection B of this section or withholds any material fact concerning the requirements of subsection B of this section or a person who is obligated to file a certificate of disclosure and who fails to file the certificate is subject to section 27-1022, section 27-1024, subsections B and C and section 27-1025.

H. For purposes of this section, "person" means:

1. A natural person.
2. Any public or private corporation, its officers, directors, trustees, ~~AND~~ incorporators and persons who control or hold over ten per cent of the issued and outstanding common shares or ten per cent of any other proprietary, beneficial or membership interest in the corporation.
3. A partnership, including all general partners and limited partners who control a ten per cent or more beneficial interest in the partnership.
4. An association or society of persons.
5. A limited liability company including all members who have a ten per cent or more interest in the limited liability company.
6. The federal government and any of its departments or agencies.
7. This state and any of its agencies, departments, political subdivisions, counties, towns or municipal corporations.

Sec. 38. Section 27-921, Arizona Revised Statutes, is amended to read:

27-921. Surface disturbances created by new exploration operation or mining unit

Beginning April 1, 1997, an owner or operator of a new exploration operation or new mining unit shall not create a surface disturbance of more than five contiguous acres until a reclamation plan and financial assurance mechanism for the exploration operation or mining unit are approved by the ~~state mine~~ inspector or are otherwise authorized by this chapter.

1 Sec. 39. Section 27-922, Arizona Revised Statutes, is amended to read:

2 27-922. Surface disturbances created by existing exploration
 3 operation or mining unit; extension; continuing
 4 operations

5 A. An owner or operator of an existing exploration operation or
 6 existing mining unit with surface disturbances of more than five contiguous
 7 acres shall submit a reclamation plan ~~to the state mine inspector~~ by April 1,
 8 1997.

9 B. An owner or operator may petition the inspector for an extension of
 10 time to submit a reclamation plan. The inspector shall grant the extension
 11 on a showing of good cause, including the need to coordinate the preparation
 12 and submission of a reclamation plan with an aquifer protection permit
 13 application under title 49, chapter 3, article 2 or with other permits and
 14 approvals required for the exploration operation or mining unit.

15 C. The owner or operator of an existing exploration operation or
 16 existing mining unit may continue operations, including creating surface
 17 disturbances, until the inspector takes final action on the reclamation plan
 18 and financial assurance mechanism.

19 D. The reclamation of surface disturbances created in whole or in part
 20 before July 17, 1994, the effective date of this chapter, and the initial
 21 rules adopted pursuant to this chapter may present special technical and
 22 economic constraints that are not encountered for new surface
 23 disturbances. The inspector shall consider the nature and extent of the
 24 existing surface disturbances, relevant site-specific circumstances and the
 25 technical and economic practicability of reclaiming such surface
 26 disturbances. The inspector shall not require the removal or relocation of
 27 existing mining units to satisfy the reclamation requirements of this
 28 chapter.

29 Sec. 40. Section 27-923, Arizona Revised Statutes, is amended to read:

30 27-923. Creating surface disturbances of five acres or less

31 A. Nothing in this chapter shall prevent an owner or operator of an
 32 exploration operation or mining unit from creating a surface disturbance of
 33 five contiguous acres or less.

34 B. From and after December 31, 1996, the ~~state mine~~ inspector may
 35 require either or both of the following in the case of a series of surface
 36 disturbances of five contiguous acres or less by the same owner or operator
 37 if the series of surface disturbances in aggregate constitute more than five
 38 acres:

- 39 1. A reclamation plan under article 3 or 4 of this chapter.
- 40 2. A financial assurance mechanism under article 5 of this chapter.

41 Sec. 41. Section 27-926, Arizona Revised Statutes, is amended to read:

42 27-926. Initiation, extension and completion of reclamation

43 A. Beginning April 1, 1997, if a surface disturbance cannot be
 44 practicably reclaimed concurrently with an exploration operation or at a
 45 mining unit, reclamation shall be initiated:

1 1. Within two years after completing the exploration operation or
2 mining unit.

3 2. Within two years after cessation of mining activity.

4 3. As required by applicable federal law.

5 B. The ~~state-mine~~ inspector shall extend the period in which to
6 initiate reclamation under subsection A, with up to three subsequent five
7 year extensions, if the owner or operator of an exploration operation or
8 mining unit demonstrates a reasonable likelihood that the project or
9 operation will resume, based on a consideration of factors, including:

10 1. The presence of additional mineralization of the commodity being
11 mined or other commodities in commerce.

12 2. Historical fluctuations in the value of the commodity being mined
13 or other commodities present if they can be mined using the same
14 disturbances.

15 3. The design life of any beneficiation process components existing at
16 a mining unit.

17 C. Once initiated, the final reclamation measures shall be performed
18 as stated in the approved reclamation plan unless the exploration operation
19 or mining unit is reactivated.

20 Sec. 42. Section 27-927, Arizona Revised Statutes, is amended to read:

21 27-927. Substantial changes to approved reclamation plan; fee

22 A. The ~~state-mine~~ inspector must approve any substantial change to an
23 approved reclamation plan as provided by this section before the change is
24 implemented.

25 B. The owner or operator of the exploration operation or mining unit
26 shall submit a notice of a proposed change to the inspector describing the
27 purpose and scope of the proposed change and whether it constitutes a
28 substantial change to the approved reclamation plan. If the inspector fails
29 to respond within thirty days, the change is considered to be consistent with
30 the operation's or unit's approved reclamation plan.

31 C. If the inspector determines that the change is substantial the
32 inspector shall:

33 1. Notify the owner or operator of the decision within fifteen days
34 after receiving the notice.

35 2. Require the owner or operator to submit an amendment to the plan
36 for approval. The inspector shall approve or disapprove the amended plan
37 within ninety days after receiving the amended plan.

38 D. The following changes are not considered to be substantial, and the
39 owner or operator is required to file only an amendment to the reclamation
40 plan and modify the financial assurance as necessary:

41 1. New surface disturbances that can be reclaimed in a manner that is
42 substantially similar to the manner of reclamation included in the approved
43 plan.

44 2. Changes in the specific techniques for reclamation, including the
45 equipment used and the mixes of seeds and soils.

1 3. Changes in location, configuration or acreage of surface
2 disturbances unless the changes substantially affect the reclamation measures
3 stated in the reclamation plan.

4 E. Before implementing a substantial change in an approved reclamation
5 plan, the owner or operator shall submit to the inspector a revised financial
6 assurance mechanism to account for the substantial change.

7 F. If a surface disturbance is created on more than fifty acres of
8 land that are not included in an initial reclamation plan, the owner or
9 operator shall submit to the inspector a fee of not more than three dollars
10 for each new acre of surface disturbance. This fee shall be submitted with
11 either the notice of proposed change required in subsection B or with a plan
12 amendment submitted pursuant to subsection D.

13 Sec. 43. Section 27-928, Arizona Revised Statutes, is amended to read:

14 27-928. Transferring an approved reclamation plan

15 A. A reclamation plan may be transferred from one person to another,
16 by operation of law or otherwise, if the current owner or operator notifies
17 the ~~state-mine~~ inspector in writing before the transfer. The notice shall
18 include:

19 1. The name, address, telephone number and statutory agent of the
20 person to whom the plan will be transferred.

21 2. The effective date of the proposed transfer.

22 3. A proposed financial assurance mechanism.

23 4. Other information the inspector may determine to be necessary by
24 rule.

25 B. The inspector may deny a transfer on determining that the proposed
26 financial assurance mechanism does not comply with article 5 of this chapter
27 or that the transferee is not capable of operating in compliance with this
28 article, the rules adopted pursuant to this article or the conditions
29 established in the plan. The inspector shall issue notice of and the reasons
30 for the denial within fifteen days after receiving the proposed transfer.
31 Except as provided in section 41-1092.08, subsection H, a final
32 administrative denial of the plan transfer is subject to judicial review
33 pursuant to title 12, chapter 7, article 6.

34 C. On receiving the approved financial assurance mechanism from the
35 transferee the inspector shall release the financial assurance mechanism
36 provided by the transferor.

37 Sec. 44. Section 27-929, Arizona Revised Statutes, is amended to read:

38 27-929. Notice of plan or substantial change

39 A. The ~~state-mine~~ inspector shall give notice of a proposed
40 reclamation plan or a substantial change to an approved reclamation plan once
41 each week for two consecutive weeks in a newspaper of general circulation in
42 the county or counties in which the exploration operation or mining unit is
43 or will be located. If there is no such newspaper, the inspector shall give
44 notice in a newspaper of general circulation that is published in an
45 adjoining county.

1 B. The notice shall briefly describe the proposed reclamation plan or
2 substantial change and state that any person who may be adversely affected by
3 the plan or substantial change may:

4 1. File a written objection to the plan or substantial change within
5 fifteen days after the last publication.

6 2. Request a public hearing.

7 C. An objection shall state the name and mailing address of the
8 objector, be signed by the objector or the objector's agent or attorney and
9 clearly state the reasons why the plan or substantial change should be
10 denied. Grounds for objection are limited to whether the proposed plan or
11 substantial change meets the criteria for approval in this chapter.

12 D. If there is sufficient public interest by persons who may be
13 adversely affected by the plan or substantial change, the inspector may hold
14 a public hearing in the county in which the exploration operation or mining
15 unit is or will be located.

16 Sec. 45. Section 27-930, Arizona Revised Statutes, is amended to read:

17 27-930. Public disclosure of information; definition

18 A. The ~~state-mine~~ inspector shall make available to the public any
19 records, reports or information obtained or prepared by the inspector, unless
20 a notice accompanying the information or any part of the information states
21 that the information is a trade secret or is otherwise confidential to the
22 party's competitive position.

23 B. If the inspector, on his own or following a request for disclosure,
24 disagrees with the trade secret or confidential notice, the inspector may
25 request the attorney general to seek a court order authorizing
26 disclosure. If a court order is sought, the party shall be served with a
27 copy of the court filing and has twenty business days from the date of
28 service to request a hearing on whether a court order should be issued. The
29 hearing shall be conducted in camera, and any order resulting from the
30 hearing is appealable as provided by law. The inspector may not disclose the
31 confidential information until a court order authorizing disclosure has been
32 obtained and becomes final. The court may award costs of litigation
33 including reasonable attorney and expert witness fees to the prevailing
34 party.

35 C. The inspector shall make available to the public the following
36 information obtained from any person pursuant to this chapter:

37 1. The name and address of any plan applicant.

38 2. The proposed post-mining land use or uses.

39 3. A general description of the proposed reclamation measures.

40 D. The inspector may disclose, with an accompanying confidentiality
41 notice, any records, reports or information obtained by the inspector or
42 employees of the division of mined land reclamation to:

43 1. Other state employees concerned with administering this chapter or
44 if the records, reports or information is relevant to any administrative or
45 judicial proceeding under this chapter.

1 2. Employees of the United States environmental protection agency if
2 the information is necessary or required to administer and implement or
3 comply with federal statutes or regulations.

4 E. For purposes of this section, "trade secret" means information to
5 which all of the following apply:

6 1. A person has taken reasonable measures to protect the information
7 from disclosure and the person intends to continue to take those measures.

8 2. The information is not and has not been reasonably obtainable by
9 legitimate means by other persons without the person's consent, other than by
10 governmental entities and other than in discovery based on a showing of
11 special need in a judicial or quasi-judicial proceeding.

12 3. A statute does not specifically require disclosure of the
13 information to the public.

14 4. The person has satisfactorily shown that disclosure of the
15 information is likely to cause substantial harm to the person's competitive
16 position.

17 Sec. 46. Section 27-931, Arizona Revised Statutes, is amended to read:

18 27-931. Variances

19 A. The ~~state mine~~ inspector, by rule or conditional order, may allow
20 an owner or operator of an exploration operation or mining unit to vary from
21 any rule adopted pursuant to this chapter or any requirement or condition of
22 a reclamation plan issued pursuant to this chapter if the inspector finds
23 that allowing the variance will not endanger public safety and will not be
24 inconsistent with the criteria established in section 27-973.

25 B. The inspector may approve innovative reclamation or other measures
26 proposed by the owner or operator that vary from the reclamation standards of
27 this chapter, the financial assurance requirements under article 5 of this
28 chapter or the rules adopted pursuant to this chapter after a public hearing
29 and on a showing that the innovative or other measures can be reasonably
30 expected to achieve the post-mining land use objectives stated in the
31 reclamation plan.

32 Sec. 47. Section 27-932, Arizona Revised Statutes, is amended to read:

33 27-932. Coordination with other governmental agencies

34 A. The ~~state mine~~ inspector shall coordinate the review and approval
35 of reclamation plans with the state land department, the United States bureau
36 of land management, the United States forest service and other agencies that
37 manage public lands on which exploration operations or mining facilities are
38 located, within the respective jurisdictions, through memoranda of agreement
39 or cooperative agreements that designate a lead agency for reclamation plan
40 review and action. This coordination is intended to avoid duplication of
41 efforts to inspect exploration operations and mining facilities and review
42 and enforce reclamation plans. The memoranda of agreement shall also provide
43 that no financial assurance may be required under this article that will
44 duplicate financial assurances required under any other law or agreement.

1 B. If an exploration operation or a mining unit is located on land
2 administered by a federal agency, an approved federal reclamation plan and a
3 financial assurance mechanism for the federal land that are consistent with
4 the requirements of this chapter supersede the requirements for a reclamation
5 plan and financial assurance mechanism otherwise required by this chapter.

6 Sec. 48. Section 27-933, Arizona Revised Statutes, is amended to read:

7 27-933. Denials; appeals

8 The owner or operator of an exploration operation or mining unit may
9 request a hearing on the ~~state-mine~~ inspector's denial of a plan pursuant to
10 title 41, chapter 6, article 10.

11 Sec. 49. Section 27-934, Arizona Revised Statutes, is amended to read:

12 27-934. Plan submission fee; accounting and appropriation of
13 revenues

14 A. The ~~state-mine~~ inspector shall assess and collect a one-time
15 submission fee from the owner or operator of each exploration operation and
16 mining unit at the time the owner or operator submits a plan under article 3
17 or 4 of this chapter.

18 B. For fiscal year 1996-1997 the submission fee is three dollars per
19 acre of surface disturbance covered by the plan. Thereafter, the inspector
20 may revise the amount of the submission fee each year based on the reasonable
21 direct costs to process, review and approve or deny the plan, but the
22 submission fee shall not exceed three dollars per acre of surface disturbance
23 covered by the plan.

24 C. The inspector shall deposit, pursuant to sections 35-146 and
25 35-147, the revenues from the submission fee in the state general fund. The
26 inspector shall submit the amount that is necessary to administer and enforce
27 this chapter as a separate item in the inspector's budget request. The
28 legislature's appropriation to the inspector shall include an amount
29 sufficient to administer and enforce this chapter, including payments to
30 consultants for services provided pursuant to section 27-935.

31 Sec. 50. Section 27-935, Arizona Revised Statutes, is amended to read:

32 27-935. Plan review and evaluation by private consultants;
33 reporting expenditures

34 A. Subject to section 38-503 and other applicable statutes and rules,
35 the ~~state-mine~~ inspector may contract with a private consultant for the
36 purpose of assisting the inspector in reviewing reclamation plans that are
37 submitted under this chapter to determine whether the plans meet the criteria
38 and requirements of this chapter and the DEPARTMENT'S rules.

39 B. The inspector shall pay the consultant for the services rendered
40 from the ~~inspector's~~ appropriation under section 27-934. The inspector shall
41 report to the staff director of the joint legislative budget committee:

- 42 1. Expenditures of ~~money~~ MONIES for purposes of this section.
- 43 2. The name and address of each consultant.
- 44 3. The plan submittals that cause the expenditure of the monies.

1 Sec. 51. Section 27-951, Arizona Revised Statutes, is amended to read:

2 27-951. Submission and contents of reclamation plan

3 A. Beginning April 1, 1997, a person who conducts exploration
4 operations that will create more than five contiguous acres of surface
5 disturbance shall submit a reclamation plan to the ~~state mine~~ inspector. The
6 reclamation plan shall:

7 1. Identify the county or counties in which exploration operation will
8 be conducted.

9 2. State the reclamation measures that will be taken to reclaim access
10 roads, drill pads, drill holes, trenches and other exploration workings where
11 the operator conducts exploration operations in this state.

12 B. An operator may submit a single reclamation plan covering all new
13 and existing exploration operations in this state.

14 Sec. 52. Section 27-952, Arizona Revised Statutes, is amended to read:

15 27-952. Notice of complete, incomplete or denied plan

16 A. The ~~state mine~~ inspector shall notify the operator that a
17 reclamation plan is administratively complete or incomplete within thirty
18 days after receiving the plan.

19 B. If the inspector notifies the operator that a plan is incomplete or
20 denied, the inspector shall include a written explanation stating the reasons
21 for denial including recommendations for correcting incomplete or
22 unacceptable parts of the plan consistent with the requirements of this
23 chapter. The operator must refile the corrected plan within ninety days
24 after notification that the previous plan was incomplete or denied or within
25 a time frame mutually agreed on between the operator and the state mine
26 inspector that would not materially affect the safety of employees or cause
27 undue hardship on ~~an~~ THE operator.

28 Sec. 53. Section 27-953, Arizona Revised Statutes, is amended to read:

29 27-953. Approval; criteria

30 The ~~state mine~~ inspector shall approve a reclamation plan for
31 exploration operations within sixty days after receiving a complete plan if
32 the plan provides for the reclamation of surface disturbances at the
33 exploration operations according to the following requirements, as
34 applicable:

35 1. Exploration access roads that the operator constructs and that will
36 not be part of a post-exploration use shall be reclaimed in a timely manner
37 after the exploration is completed. If a governmental unit or agency will
38 accept dedication or conveyance of an access road, reclamation is not
39 required. Reclamation shall include removing culverts, restoring drainage to
40 its general predisturbance configuration, ripping the road surface to reduce
41 compaction and aid revegetation and controlling access of motorized vehicles
42 to the reclaimed area.

43 2. Holes that are drilled for mineral exploration purposes, unless
44 completed for water monitoring, withdrawal or other use, shall be plugged,
45 sealed or capped promptly after their use is completed as prescribed by rule

1 by the department of water resources and as necessary to ensure the safety of
2 persons, domestic animals, livestock and machinery in the area.

3 3. Drill pads shall be reshaped promptly after completion of drilling
4 to prevent erosion and to establish contours that are generally compatible
5 with the adjacent areas or shall be ripped to reduce compaction and aid
6 revegetation and, if appropriate, seeded to minimize erosion.

7 4. Mud pits that are used for drilling fluids and produced waters
8 shall be reclaimed after hazardous substances are removed and disposed of, if
9 necessary, and after they are sufficiently dry by reshaping to contours that
10 are generally compatible with the adjacent areas. If it is appropriate to
11 the area, suitable growth media shall be spread and seeded over the pit area.

12 5. Exploration trenches and pits shall be backfilled and reclaimed as
13 soon as practicable as prescribed in the reclamation plan. If the trench or
14 pit will remain open, measures shall be taken to stabilize the sides to
15 address erosion control and to restrict access. Trench and pit reclamation
16 shall include backfilling, reshaping to contours generally compatible with
17 the adjacent areas and, if appropriate for the area, seeding to reestablish
18 vegetation.

19 6. Areas that have been cleared by blading with mechanized equipment
20 during exploration operations shall be reshaped after exploration is
21 completed, unless used for a post-exploration use, to be generally compatible
22 with the adjacent area. Compacted areas shall be ripped to aid revegetation.

23 Sec. 54. Section 27-954, Arizona Revised Statutes, is amended to read:

24 27-954. Beginning new exploration operations

25 New exploration operations may begin when both of the following occur:

26 1. The ~~state-mine~~ inspector approves the reclamation plan for the
27 exploration operations or ninety days after the inspector receives a
28 reclamation plan if the inspector fails to notify the owner or operator that
29 the plan submitted is incomplete or denied.

30 2. Financial assurance has been submitted to the inspector as required
31 by article 5 of this chapter.

32 Sec. 55. Section 27-972, Arizona Revised Statutes, is amended to read:

33 27-972. Notice of complete, incomplete or denied plan

34 A. The ~~state-mine~~ inspector shall notify the owner or operator that
35 the plan is complete or incomplete within thirty days after receiving the
36 plan.

37 B. The inspector shall approve or disapprove a plan for new mining
38 units within one hundred twenty days after receiving a complete plan.

39 C. If the inspector notifies the owner or operator that a plan is
40 incomplete or denied, the inspector shall include a written explanation
41 stating the reasons for denial including recommendations for correcting
42 incomplete or unacceptable parts of the plan consistent with the requirements
43 of this chapter. The owner or operator must refile the corrected plan within
44 ninety days after notification that the previous plan was incomplete or
45 denied or within a time frame mutually agreed on between the owner or

1 operator and the ~~state-mine~~ inspector that would not materially affect the
2 safety of employees or cause undue hardship on ~~an~~ THE owner or operator.

3 Sec. 56. Section 27-973, Arizona Revised Statutes, is amended to read:
4 27-973. Approval; criteria

5 A. The ~~state-mine~~ inspector shall approve a reclamation plan for
6 mining units if the plan provides for reclamation measures for surface
7 disturbances that are:

8 1. Necessary to achieve a safe and stable condition suitable for the
9 post-mining land use objectives stated in the reclamation plan.

10 2. Compatible with good engineering practices regarding erosion
11 control and seismic activity for the applicable seismic zone.

12 B. In evaluating the reclamation plan, the inspector shall consider
13 the technical and economic practicability of the proposed reclamation
14 measures, taking into account the site-specific circumstances at the mining
15 unit and the proposed post-mining land use objectives as stated in the
16 reclamation plan, including:

17 1. Grazing and other agricultural land use objectives.

18 2. Developed water resources and water management projects.

19 3. Fish or wildlife habitat.

20 4. Forestry.

21 5. Historic preservation.

22 6. Industrial or commercial, including tourism.

23 7. Recreation.

24 8. Residential.

25 9. Scientific or educational.

26 10. Mining or remining, except that the proposed post-mining use of
27 mining or remining does not relieve an owner or operator from complying with
28 or implementing the reclamation plan requirements under this chapter.

29 11. Other appropriate post-mining land use objectives.

30 C. The post-mining land use objective stated in the reclamation plan
31 need not be the same use of the land that existed before the mining facility
32 was located on the site.

33 Sec. 57. Section 27-976, Arizona Revised Statutes, is amended to read:
34 27-976. Beginning new mining units

35 Beginning April 1, 1997, new mining units may begin when both of the
36 following occur:

37 1. The ~~state-mine~~ inspector approves the reclamation plan for the
38 mining unit, or one hundred fifty days after the inspector receives a
39 reclamation plan if the inspector does not notify the owner or operator that
40 the plan submitted is incomplete or denied.

41 2. Financial assurance has been submitted to the inspector as required
42 by article 5 of this chapter.

1 Sec. 58. Section 27-992, Arizona Revised Statutes, is amended to read:

2 27-992. Mining unit or existing exploration operation

3 A. The owner or operator of an existing exploration operation or a new
4 or existing mining unit shall transmit a financial assurance mechanism to the
5 ~~state mine~~ inspector within sixty days after a reclamation plan is approved.
6 The inspector shall take final action on the financial assurance mechanism
7 within thirty days after it is received.

8 B. In determining the amount of financial assurance to be provided for
9 an existing exploration operation or a new or existing mining unit, the
10 inspector shall consider the costs of approved reclamation measures stated in
11 the reclamation plan. In computing reclamation costs, the inspector shall
12 assume that third parties will perform the reclamation measures. The
13 inspector shall reduce the amount of the required financial assurance to the
14 costs of the owner or operator performing the reclamation measures if the
15 owner or operator can demonstrate sufficient financial ability to perform the
16 necessary reclamation or if the owner or operator meets the financial
17 assurance reduction criteria established by rule. Financial ability shall be
18 established by one or more of the financial mechanisms described in 40 Code
19 of Federal Regulations section 264.143(f).

20 C. Each financial assurance mechanism for an existing exploration or
21 new or existing mining unit submitted to the inspector shall provide the
22 amount in current dollars equal to the cost to:

23 1. Perform the approved reclamation measures stated in the reclamation
24 plan on the area of surface disturbance.

25 2. Provide continued care and monitoring of the areas stated in the
26 reclamation plan for revegetation for no more than three growing seasons
27 without additional supplemental irrigation or other man-induced inputs after
28 performing the reclamation measures unless the supplemental inputs are part
29 of the post-mining land use. Notwithstanding this paragraph, revegetation
30 efforts that are necessary to achieve the post-mining land use objective are
31 considered adequate and complete if the owner or operator has taken
32 reasonable measures to achieve vegetative success. Technical and economic
33 practicability as it relates to site-specific conditions and the proposed
34 post-mining land use shall be taken into account in making that
35 determination.

36 D. The inspector shall adjust the amount of financial assurance every
37 five years or more often as necessary to adjust for new areas of planned
38 surface disturbances or inflation or to reflect changed costs resulting from
39 substantial modifications of the reclamation plan.

40 Sec. 59. Section 27-993, Arizona Revised Statutes, is amended to read:

41 27-993. New exploration operation

42 A. Beginning April 1, 1997, the owner or operator of a new exploration
43 operation shall furnish a financial assurance mechanism to the ~~state mine~~
44 inspector in an amount equivalent to two thousand dollars per acre of new

1 surface disturbance, unless the inspector approves a cost estimate for an
2 amount less than two thousand dollars per acre.

3 B. An owner or operator may provide a single financial assurance
4 mechanism for all of its exploration operations conducted in this state.

5 Sec. 60. Section 27-996, Arizona Revised Statutes, is amended to read:
6 27-996. Release of financial assurance

7 A. An owner or operator may apply to the ~~state-mine~~ inspector to
8 release all or part of the financial assurance provided under this
9 article. The application shall:

10 1. Describe the reclamation measures that have been performed.

11 2. Describe any surface disturbances included in the reclamation plan
12 that have not been disturbed.

13 3. Contain an estimate of the costs of reclamation measures that have
14 not been performed.

15 B. Within sixty days after receiving a complete application, the
16 inspector shall release all or part of the financial assurance except for any
17 amount that is necessary to perform the reclamation measures identified in
18 the reclamation plan. After the reclamation measures have been performed,
19 the remaining financial assurance shall be released, except that ten per cent
20 shall be retained for the costs of care, monitoring and one reseeding, if
21 necessary, for areas that have been revegetated. The inspector shall release
22 the retained monies after a period of not more than three growing seasons
23 after the supplemental management or other man-induced inputs have been
24 finally removed or as otherwise provided in section 27-992, subsection B.

25 Sec. 61. Section 27-1021, Arizona Revised Statutes, is amended to
26 read:

27 27-1021. Inspections

28 Beginning April 1, 1997, the ~~state-mine~~ inspector may enter and
29 inspect, during normal business hours, any exploration operation or mining
30 facility that is subject to this chapter to determine compliance with this
31 chapter. The inspector shall give the owner or operator the opportunity to
32 have its representative accompany the inspector. Within thirty days after
33 the date of the inspection, the division of mined land reclamation shall
34 provide to the owner or operator a copy of any inspection report produced as
35 a result of any inspection of the exploration operation or mining facility.

36 Sec. 62. Section 27-1022, Arizona Revised Statutes, is amended to
37 read:

38 27-1022. Compliance orders

39 A. Beginning April 1, 1997, if the ~~state-mine~~ inspector determines
40 that a person is violating this chapter, a rule adopted pursuant to this
41 chapter or any condition of a reclamation plan approved pursuant to this
42 chapter or is causing an imminent and substantial danger to the public
43 safety, the inspector may issue an order requiring compliance either
44 immediately or within a stated period of time.

1 B. A compliance order shall state with reasonable specificity the
2 nature of the violation, a time for compliance, if applicable, and the right
3 to a hearing.

4 C. The inspector shall transmit the compliance order to the alleged
5 violator either by certified mail, return receipt requested, or by hand
6 delivery.

7 D. At the inspector's request, the attorney general may file an action
8 in superior court to enforce orders issued under this section after the order
9 becomes final. The action shall be filed in superior court in the county in
10 which the alleged violation occurred or in which the inspector maintains an
11 office.

12 Sec. 63. Section 27-1023, Arizona Revised Statutes, is amended to
13 read:

14 27-1023. Enforcement action on reclamation plan approval

15 A. The ~~state-mine~~ inspector may suspend, withdraw or revoke a
16 reclamation plan approval if the inspector determines that the facility is
17 in violation of any rule adopted pursuant to this chapter.

18 B. Any action taken under this section shall comply with the
19 requirements of title 41, chapter 6, article 10.

20 Sec. 64. Section 27-1024, Arizona Revised Statutes, is amended to
21 read:

22 27-1024. Injunctive relief; civil penalties

23 A. Beginning April 1, 1997, if the ~~state-mine~~ inspector has reason to
24 believe that a person is violating this chapter or a rule adopted pursuant
25 to this chapter or that a person is causing an imminent and substantial
26 danger to the public safety, the inspector, through the attorney general, may
27 request a temporary restraining order, a preliminary injunction, a permanent
28 injunction or any other relief necessary to protect the public safety,
29 without regard to whether the person has requested a hearing.

30 B. A person who violates this chapter or a rule, order or reclamation
31 plan approval adopted or issued pursuant to this chapter is subject to a
32 civil penalty of not more than one thousand dollars for each day of
33 violation, not to exceed fifteen thousand dollars for each violation. At the
34 inspector's request, the attorney general shall file an action in superior
35 court to recover civil penalties as prescribed by this section.

36 C. An action filed under this section shall be brought in superior
37 court in the county in which the alleged violation occurred or in which the
38 inspector maintains an office.

39 Sec. 65. Section 27-1025, Arizona Revised Statutes, is amended to
40 read:

41 27-1025. Agency order; appeal

42 A. An order issued by the ~~state-mine~~ inspector pursuant to this
43 article is final unless the defendant requests a hearing pursuant to title
44 41, chapter 6, article 10 within thirty days after receiving the order.

B. Except as provided in section 41-1092.08, subsection H, a final agency order is subject to judicial review pursuant to title 12, chapter 7, article 6.

Sec. 66. Section 27-1201, Arizona Revised Statutes, is amended to read:

~~27-1201.~~ Definitions

In this chapter, unless the context otherwise requires:

1. "Aggregate" has the same meaning prescribed in section 27-441.

2. "Aggregate mining" has the same meaning prescribed in section 27-441.

3. "Aggregate mining facility" means property that is owned, operated or managed by the same person for aggregate mining. Property that is not contiguous but is within the same geographical area and operated as a single aggregate mining complex is considered to be a single aggregate mining facility.

4. "Aggregate mining unit" means an individual portion of an aggregate mining facility that encompasses one or more surface disturbances.

~~5.~~ "DEPARTMENT" MEANS THE DEPARTMENT OF MINING.

~~5- 6.~~ "Division" means the division of mined land reclamation in the ~~office of the state mine inspector~~ DEPARTMENT.

~~6- 7.~~ "Existing aggregate mining unit" means an aggregate mining unit, other than a new aggregate mining unit, that continued operations after April 1, 1997.

~~7- 8.~~ "Existing exploration operation" means an exploration operation that is ongoing as of the effective date of the initial rules adopted by the inspector pursuant to this chapter.

~~8- 9.~~ "Exploration operations" means activities that create surface disturbances outside an aggregate mining facility and that are conducted to determine the presence, location, extent, depth or grade of aggregate, including constructing access roads and drill pads.

~~9- 10.~~ "Inactive aggregate mining unit" means an aggregate mining unit that has not been operated after April 1, 1997 and for which there is a current identifiable owner or operator other than the federal or state government.

~~10- 11.~~ "Inspector" means the DIRECTOR OF THE DEPARTMENT OF MINING, ACTING AS state mine inspector, OR THE DEPUTY MINE INSPECTOR.

~~11- 12.~~ "Maintenance" means an activity to preserve or repair the function of previously disturbed land, including grading roads, repairing berms or dams and dredging sedimentation basins.

~~12- 13.~~ "New aggregate mining unit" means an aggregate mining unit at which surface disturbances begin after the effective date of the initial rules adopted pursuant to this chapter.

~~13- 14.~~ "New exploration operation" means an exploration operation that begins after the effective date of the initial rules adopted pursuant to this chapter.

~~14.~~ 15. "Reclamation" means measures that are taken on surface disturbances at exploration operations and aggregate mining units to achieve stability and safety consistent with postaggregate mining land use objectives specified in the reclamation plan.

~~15.~~ 16. "Soil" means topsoil, suitable substrata or other plant growth media that will sustain vegetation.

~~16.~~ 17. "Stability" means the condition of land with respect to its erosion potential and ability to withstand seismic activity.

~~17.~~ 18. "Surface disturbance" means clearing, covering or moving land by means of mechanized earthmoving equipment for aggregate mining and exploration but does not include surveying, assessment and location work, seismic work, maintenance and other such activities that create a de minimis disturbance.

Sec. 67. Section 27-1202, Arizona Revised Statutes, is amended to read:

27-1202. Coordination of programs and activities

A. The ~~state-mine-inspector~~ DIRECTOR OF THE DEPARTMENT OF MINING shall employ staff who have the necessary and appropriate experience in aggregate mining and reclaiming aggregate mined lands.

B. Except as provided by subsection C, the authority to administer aggregate mined land reclamation is conferred on the ~~state-mine~~ inspector as provided in this chapter.

C. Subsection B of this section does not apply to a city or town that adopted an ordinance before January 1, 2005 requiring aggregate mined land reclamation. This section does not affect the legal status of nonconforming uses in a city or town.

D. The requirements of a reclamation plan under this chapter and a floodplain use regulation for the same aggregate mining unit or exploration operation, including any financial assurance requirements, shall not contradict or be redundant or inconsistent with the requirements of this chapter.

E. This chapter does not supersede the requirements of a county flood control district to maintain stability and the flood carrying capacity of the floodplain.

F. This chapter does not supersede the requirements of title 49 or any other applicable federal, state or local law.

Sec. 68. Section 27-1203, Arizona Revised Statutes, is amended to read:

27-1203. Exemption for state lands; agreements for coordination with other governmental agencies and landowners

A. This chapter does not apply to any activity that occurs on state land and that is regulated pursuant to chapter 2, article 5 of this title.

B. The ~~state-mine-inspector~~ DIRECTOR OF THE DEPARTMENT OF MINING may enter into agreements pursuant to title 11, chapter 7, article 3 with the state land department, the United States bureau of land management, the

1 United States forest service and other agencies that manage public lands and
2 take other appropriate measures to coordinate the review and approval of
3 reclamation plans, including designating a lead agency for reclamation plan
4 review and action. The ~~inspector~~ DIRECTOR shall avoid redundant,
5 inconsistent or contradictory reclamation, inspection, administration,
6 enforcement and financial assurance requirements.

7 Sec. 69. Section 27-1204, Arizona Revised Statutes, is amended to
8 read:

9 27-1204. Rules; contributions

10 A. The ~~inspector~~ DIRECTOR OF THE DEPARTMENT OF MINING shall adopt
11 rules consistent with this chapter for the reclamation of surface
12 disturbances at exploration operations and aggregate mining units and for the
13 administration of this chapter.

14 B. To accomplish the purposes of this section, the ~~inspector~~ DIRECTOR
15 may accept monies for deposit in the aggregate mining reclamation fund
16 ESTABLISHED BY SECTION 27-1233 received from the federal government or other
17 governmental agencies. The state shall separately account for monies
18 received pursuant to this subsection that are deposited in the aggregate
19 mining reclamation fund.

20 Sec. 70. Section 27-1205, Arizona Revised Statutes, is amended to
21 read:

22 27-1205. Certificate of disclosure of violations; remedies;
23 definition

24 A. The following persons shall file a certificate of disclosure with
25 the division of mined land reclamation as prescribed by this section:

26 1. A person who is engaged in an activity subject to regulation under
27 this chapter and who has been convicted of a felony involving laws related to
28 mined land reclamation within the five year period immediately preceding
29 execution of the certificate.

30 2. A person who is engaged in an activity subject to regulation under
31 this chapter and who is or has been subject in any civil proceeding to an
32 injunction, decree, judgment or permanent order of any state or federal court
33 within the five year period immediately preceding the execution of the
34 certificate that involved a violation of laws of that jurisdiction relating
35 to mined land reclamation.

36 B. The certificate of disclosure prescribed by this section shall
37 contain the following:

38 1. Identification of the person, including present full name, all
39 prior names or aliases, full birth name, present house address and all prior
40 addresses for the immediately preceding five year period, date and place of
41 birth and social security number.

42 2. The nature and description of each conviction or judicial action,
43 the date and place, the court and public agency involved and the file or
44 cause number of the case.

3. A written declaration that each signer swears to its contents under penalty of perjury.

C. The certificate of disclosure submitted on behalf of a corporation shall be executed by any two executive officers or directors of the corporation.

D. Initial certificates shall be delivered to the division within ninety days after the person first becomes subject to the disclosure requirements of this section. Certificates shall be filed annually thereafter within ninety days after the close of the person's fiscal year as reported on the initial certificate.

E. By February 1 of each year, the ~~state mine inspector~~ DIRECTOR OF THE DEPARTMENT OF MINING shall provide the attorney general with a list of all persons who were convicted of the crimes or who are the subject of the judicial actions described in subsection A of this section, as indicated from the certificates of disclosure filed during the preceding year.

F. Instead of the certificate of disclosure prescribed by this section, a corporation may submit to the division copies of annual reports filed with the securities and exchange commission pursuant to section 13 or 15(d) of the securities exchange act of 1934 (15 United States Code section ~~78~~ 78a), commonly known as a "10-K form", within ninety days after filing the annual report. The initial submission shall include 10-K forms for the preceding five years.

G. A person who contributes information for a certificate of disclosure and who makes an untrue statement of material fact concerning the requirements of subsection B of this section or withholds any material fact concerning the requirements of subsection B of this section or a person who is obligated to file a certificate of disclosure and who fails to file the certificate is subject to section 27-1322, section 27-1324, subsections B and C and section 27-1325.

H. For the purposes of this section, "person" means:

1. A natural person.

2. Any public or private corporation, its officers, directors, trustees, incorporators and persons who control or hold over ten per cent of the issued and outstanding common shares or ten per cent of any other proprietary, beneficial or membership interest in the corporation.

3. A partnership, including all general partners and limited partners who control a ten per cent or more beneficial interest in the partnership.

4. An association or society of persons.

5. A limited liability company including all members who have a ten per cent or more interest in the limited liability company.

6. The federal government and any of its departments or agencies.

7. This state and any of its agencies, departments, political subdivisions, counties, towns or municipal corporations.

1 Sec. 71. Section 27-1221, Arizona Revised Statutes, is amended to
2 read:

3 27-1221. Surface disturbances created by new exploration
4 operation or aggregate mining unit

5 Beginning January 1, 2007, an owner or operator of a new exploration
6 operation or new aggregate mining unit shall not create a surface disturbance
7 of more than five contiguous acres until a reclamation plan and financial
8 assurance mechanism for the exploration operation or aggregate mining unit
9 are approved by the ~~state-mine~~ inspector or are otherwise authorized by this
10 chapter.

11 Sec. 72. Section 27-1222, Arizona Revised Statutes, is amended to
12 read:

13 27-1222. Surface disturbances created by existing exploration
14 operation or aggregate mining unit; extension;
15 continuing operations

16 A. An owner or operator of an existing exploration operation or
17 existing aggregate mining unit with surface disturbances of more than five
18 contiguous acres shall submit a reclamation plan ~~to the state-mine inspector~~
19 on or before January 1, 2007.

20 B. An owner or operator may petition the inspector for an extension of
21 time to submit a reclamation plan. The inspector shall grant the extension
22 on a showing of good cause, including the need to coordinate the preparation
23 and submission of a reclamation plan with other permits and approvals
24 required for the exploration operation or aggregate mining unit.

25 C. The owner or operator of an existing exploration operation or
26 existing aggregate mining unit may continue operations, including creating
27 surface disturbances, until the inspector takes final action on the
28 reclamation plan and financial assurance mechanism.

29 D. The reclamation of surface disturbances created in whole or in part
30 before AUGUST 12, 2005 AND the effective date of ~~this chapter and~~ the initial
31 rules adopted pursuant to this chapter may present special technical and
32 economic constraints that are not encountered for new surface disturbances.
33 The inspector shall consider the nature and extent of the existing surface
34 disturbances, relevant site-specific circumstances and the technical and
35 economic practicability of reclaiming such surface disturbances. The
36 inspector shall not require the removal or relocation of existing aggregate
37 mining units to satisfy the reclamation requirements of this chapter.

38 Sec. 73. Section 27-1223, Arizona Revised Statutes, is amended to
39 read:

40 27-1223. Creating surface disturbances of five acres or less

41 A. Nothing in this chapter shall prevent an owner or operator of an
42 exploration operation or aggregate mining unit from creating a surface
43 disturbance of five contiguous acres or less.

44 B. From and after December 31, 2006, the ~~state-mine~~ inspector may
45 require either or both of the following in the case of a series of surface

1 disturbances of five contiguous acres or less by the same owner or operator
2 if the series of surface disturbances in aggregate constitute more than five
3 acres:

- 4 1. A reclamation plan under article 3 or 4 of this chapter.
- 5 2. A financial assurance mechanism under article 5 of this chapter.

6 Sec. 74. Section 27-1226, Arizona Revised Statutes, is amended to
7 read:

8 27-1226. Initiation, extension and completion of reclamation

9 A. Beginning January 1, 2007, if a surface disturbance cannot be
10 practicably reclaimed concurrently with an exploration operation or at an
11 aggregate mining unit, reclamation shall be initiated:

- 12 1. Within one year after completing the exploration operation or
13 aggregate mining unit.
- 14 2. Within one year after cessation of aggregate mining activity.
- 15 3. As required by applicable federal law.

16 B. The ~~state-mine~~ inspector shall extend the period in which to
17 initiate reclamation under subsection A, with up to three subsequent five
18 year extensions, if the owner or operator of an exploration operation or
19 aggregate mining unit demonstrates a reasonable likelihood that the project
20 or operation will resume, based on a consideration of factors, including:

- 21 1. The presence of additional aggregate being mined or other
22 commodities in commerce.
- 23 2. Historical fluctuations in the value of the commodity being mined
24 or other commodities present if they can be mined using the same
25 disturbances.
- 26 3. The design life of any process components existing at an aggregate
27 mining unit.

28 C. Once initiated, the final reclamation measures shall be performed
29 as stated in the approved reclamation plan unless the exploration operation
30 or aggregate mining unit is reactivated.

31 Sec. 75. Section 27-1227, Arizona Revised Statutes, is amended to
32 read:

33 27-1227. Substantial changes to approved reclamation plan

34 A. The ~~state-mine~~ inspector must approve any substantial change to an
35 approved reclamation plan as provided by this section before the change is
36 implemented.

37 B. The owner or operator of the exploration operation or aggregate
38 mining unit shall submit a notice of a proposed change to the inspector
39 describing the purpose and scope of the proposed change and whether it
40 constitutes a substantial change to the approved reclamation plan. The
41 inspector shall notify the owner or operator submitting a notice of a
42 proposed change to an approved reclamation plan whether the proposed change
43 constitutes a substantial change within fifteen days after receiving the
44 notice.

C. If the inspector determines that the change is substantial, the inspector shall require the owner or operator to submit an amendment to the plan for approval. The inspector shall approve or disapprove the amended plan within ninety days after receiving the amended plan.

D. The inspector shall define substantial change by rule.

E. Before implementing a substantial change in an approved reclamation plan, the owner or operator shall submit to the inspector a revised financial assurance mechanism to account for the substantial change.

Sec. 76. Section 27-1228, Arizona Revised Statutes, is amended to read:

27-1228. Transferring an approved reclamation plan

A. A reclamation plan may be transferred from one person to another, by operation of law or otherwise, if the current owner or operator notifies the ~~state-mine~~ inspector in writing before the transfer. The notice shall include:

1. The name, address, telephone number and statutory agent of the person to whom the plan will be transferred.
2. The effective date of the proposed transfer.
3. A proposed financial assurance mechanism.
4. Other information the inspector may determine to be necessary by rule.

B. The inspector may deny a transfer on determining that the proposed financial assurance mechanism does not comply with article 5 of this chapter or that the transferee is not capable of operating in compliance with this article, the rules adopted pursuant to this article or the conditions established in the plan. The inspector shall issue notice of and the reasons for the denial within fifteen days after receiving the proposed transfer. Except as provided in section 41-1092.08, subsection H, a final administrative denial of the plan transfer is subject to judicial review pursuant to title 12, chapter 7, article 6.

C. On receiving the approved financial assurance mechanism from the transferee the inspector shall release the financial assurance mechanism provided by the transferor.

Sec. 77. Section 27-1229, Arizona Revised Statutes, is amended to read:

27-1229. Notice of plan or substantial change; new exploration operations; new aggregate mining units

A. The ~~state-mine~~ inspector shall schedule and conduct a public meeting on a proposed reclamation plan for a new exploration operation or new aggregate mining unit or substantial change to an approved reclamation plan within forty-five days after receiving a proposed reclamation plan or a substantial change to an approved reclamation plan that the inspector deems to be complete. The inspector shall conduct the meeting in the county in which the exploration operation or aggregate mining unit is located.

1 B. The inspector shall give at least thirty days' notice of the
2 meeting. The notice shall briefly describe the proposed reclamation plan or
3 substantial change and shall designate where the plan or change may be
4 accessed. The notice shall be:

5 1. Filed with the secretary of state.

6 2. Sent by first class mail to cities and counties located within five
7 miles of the exploration operation or aggregate mining unit.

8 3. Sent by first class mail to the department of water resources,
9 department of environmental quality, multi-county water conservation
10 districts and agencies that own or manage PUBLIC lands on which the
11 exploration operation or aggregate mining unit is located.

12 4. Sent by first class mail to property owners within one mile of an
13 exploration operation or aggregate mining unit located in a county with a
14 population of less than eight hundred thousand persons or within one-half
15 mile of an exploration operation or aggregate mining unit located in any
16 other county.

17 5. Posted in five conspicuous public locations within one mile of the
18 exploration operation or aggregate mining unit.

19 C. The exploration operation's or aggregate mining unit's designated
20 representative shall attend the public meeting and respond to questions that
21 relate to information in the reclamation plan or substantial change.

22 D. If an interested party cannot attend the public meeting, that party
23 may submit written comments to the inspector before the meeting regarding the
24 reclamation plan or substantial change, and the inspector shall consider the
25 written comments.

26 E. The inspector shall adopt rules to implement the provisions of this
27 section.

28 Sec. 78. Section 27-1230, Arizona Revised Statutes, is amended to
29 read:

30 27-1230. Notice of plan for existing exploration operations and
31 existing aggregate mining units

32 A. The inspector shall give notice of a proposed reclamation plan for
33 an existing exploration operation or an existing aggregate mining unit. The
34 notice shall be:

35 1. Filed with the secretary of state.

36 2. Sent by first class mail to cities and counties located within five
37 miles of the existing exploration operation or the existing aggregate mining
38 unit.

39 3. Sent by first class mail to the department of water resources,
40 department of environmental quality, multi-county water conservation
41 districts and agencies that own or manage PUBLIC lands on which the
42 exploration operation or aggregate mining unit is located.

43 4. Sent by first class mail to property owners with property adjoining
44 the exploration operation or aggregate mining unit.

1 5. Published once each week for two consecutive weeks in a newspaper
2 of general circulation in the county or counties in which the exploration
3 operation or aggregate mining unit is located. If there is no such
4 newspaper, the inspector shall give notice in a newspaper of general
5 circulation that is published in an adjoining county.

6 6. Posted in five conspicuous public locations within one mile of the
7 exploration operation or aggregate mining unit.

8 B. The notice shall briefly describe the proposed reclamation plan and
9 shall designate where the plan may be accessed. The notice shall state that
10 any person who may be adversely affected by the plan may file written
11 comments on the plan within fifteen days after the last publication and
12 request a public meeting. If there is sufficient public interest by persons
13 who may be adversely affected by the plan, the inspector shall hold a public
14 meeting in the county in which the exploration operation or aggregate mining
15 unit is located.

16 C. The exploration operation or mining unit's designated
17 representative shall attend the public meeting and respond to questions that
18 relate to information in the reclamation plan.

19 D. If an interested party cannot attend the public meeting, that party
20 may submit written comments to the inspector before the meeting regarding the
21 reclamation plan, and the inspector shall consider the written comments.

22 E. The ~~inspector~~ DIRECTOR OF THE DEPARTMENT OF MINING shall adopt
23 rules to implement ~~the provisions of~~ this section.

24 Sec. 79. Section 27-1231, Arizona Revised Statutes, is amended to
25 read:

26 27-1231. Public disclosure of information; definition

27 A. The ~~state-mine~~ inspector shall make available to the public any
28 records, reports or information obtained or prepared by the inspector, unless
29 a notice accompanying the information or any part of the information states
30 that the information is a trade secret or is otherwise confidential to the
31 party's competitive position.

32 B. If the inspector, on the inspector's initiative or following a
33 request for disclosure, disagrees with the trade secret or confidential
34 notice, the inspector may request the attorney general to seek a court order
35 authorizing disclosure. If a court order is sought, the party shall be
36 served with a copy of the court filing and has twenty business days from the
37 date of service to request a hearing on whether a court order should be
38 issued. The hearing shall be conducted in camera, and any order resulting
39 from the hearing is appealable as provided by law. The inspector may not
40 disclose the confidential information until a court order authorizing
41 disclosure has been obtained and becomes final. The court may award costs of
42 litigation, including reasonable attorney and expert witness fees, to the
43 prevailing party.

44 C. The inspector shall make available to the public the following
45 information obtained from any person pursuant to this chapter:

- 1 1. The name and address of any plan applicant.
- 2 2. The proposed postaggregate mining land use or uses.
- 3 3. A general description of the proposed reclamation measures.
- 4 D. The inspector may disclose, with an accompanying confidentiality
- 5 notice, any records, reports or information obtained by the inspector or
- 6 employees of the division of mined land reclamation to:
- 7 1. Other state employees concerned with administering this chapter or
- 8 if the records, reports or information is relevant to any administrative or
- 9 judicial proceeding under this chapter.
- 10 2. Employees of the United States environmental protection agency if
- 11 the information is necessary or required to administer and implement or
- 12 comply with federal statutes or regulations.
- 13 E. For the purposes of this section, "trade secret" means information
- 14 to which all of the following apply:
- 15 1. A person has taken reasonable measures to protect the information
- 16 from disclosure and the person intends to continue to take those measures.
- 17 2. The information is not and has not been reasonably obtainable by
- 18 legitimate means by other persons without the person's consent, other than by
- 19 governmental entities and other than in discovery based on a showing of
- 20 special need in a judicial or quasijudicial proceeding.
- 21 3. A statute does not specifically require disclosure of the
- 22 information to the public.
- 23 4. The person has satisfactorily shown that disclosure of the
- 24 information is likely to cause substantial harm to the person's competitive
- 25 position.
- 26 Sec. 80. Section 27-1232, Arizona Revised Statutes, is amended to
- 27 read:
- 28 27-1232. Coordination with other governmental agencies
- 29 A. The ~~state mine~~ inspector shall coordinate the review and approval
- 30 of reclamation plans with the state land department, the United States bureau
- 31 of land management, the United States forest service and other agencies that
- 32 own and manage public lands on which exploration operations or aggregate
- 33 mining facilities are located, within the respective jurisdictions, through
- 34 memoranda of agreement or cooperative agreements that designate a lead agency
- 35 for reclamation plan review and action. This coordination is intended to
- 36 avoid duplication of efforts to inspect exploration operations and aggregate
- 37 mining facilities and review and enforce reclamation plans. The memoranda of
- 38 agreement shall also provide that no financial assurance may be required
- 39 under this article that will duplicate financial assurances required under
- 40 any other law or agreement.
- 41 B. If an exploration operation or an aggregate mining unit is located
- 42 on land administered by a federal agency, an approved federal reclamation
- 43 plan and a financial assurance mechanism for the federal land that are
- 44 consistent with the requirements of this chapter supersede the requirements

1 for a reclamation plan and financial assurance mechanism otherwise required
2 by this chapter.

3 Sec. 81. Section 27-1233, Arizona Revised Statutes, is amended to
4 read:

5 27-1233. Plan submission fee: aggregate mining reclamation fund

6 A. The ~~state-mine~~ inspector may establish by rule a fee TO BE
7 COLLECTED from the owner or operator of each exploration operation and
8 aggregate mining unit at the time the owner or operator submits a plan under
9 article 3 or 4 of this chapter.

10 B. The aggregate mining reclamation fund is established consisting of
11 fees collected pursuant to subsection A of this section AND MONIES RECEIVED
12 PURSUANT TO SECTION 27-1204. The inspector shall administer the fund.
13 Monies in the fund are subject to legislative appropriation and shall be used
14 by the inspector to administer and enforce this chapter. On notice from the
15 inspector, the state treasurer shall invest and divest monies in the fund as
16 provided by section 35-313 and monies earned from investment shall be
17 credited to the fund.

18 Sec. 82. Section 27-1234, Arizona Revised Statutes, is amended to
19 read:

20 27-1234. Plan review and evaluation by private consultants;
21 reporting expenditures

22 A. Subject to section 38-503 and other applicable statutes and rules,
23 the ~~state-mine~~ inspector may contract with a private consultant for the
24 purpose of assisting the inspector in reviewing reclamation plans that are
25 submitted under this chapter to determine whether the plans meet the criteria
26 and requirements of this chapter and the rules adopted by the inspector.

27 B. The inspector shall pay the consultant for the services rendered
28 from the inspector's appropriation under section 27-1233. The inspector
29 shall report to the staff director of the joint legislative budget committee:

- 30 1. Expenditures of money for purposes of this section.
- 31 2. The name and address of each consultant.
- 32 3. The plan submittals that cause the expenditure of the monies.

33 Sec. 83. Section 27-1235, Arizona Revised Statutes, is amended to
34 read:

35 27-1235. Appeals

36 A person may appeal ~~a state-mine-inspector~~ AN action taken BY THE
37 INSPECTOR pursuant to this chapter as provided in title 41, chapter 6,
38 article 10.

39 Sec. 84. Section 27-1251, Arizona Revised Statutes, is amended to
40 read:

41 27-1251. Submission and contents of reclamation plan

42 A. Beginning January 1, 2007, a person who conducts exploration
43 operations that will create more than five contiguous acres of surface
44 disturbance shall submit a reclamation plan to the ~~state-mine~~ inspector. The
45 reclamation plan shall:

1 1. Identify the county or counties in which exploration operations
2 will be conducted.

3 2. State the reclamation measures that will be taken to reclaim access
4 roads, drill pads, drill holes, trenches and other exploration workings where
5 the operator conducts exploration operations in this state.

6 B. An operator may submit a single reclamation plan covering all new
7 and existing exploration operations in this state.

8 Sec. 85. Section 27-1252, Arizona Revised Statutes, is amended to
9 read:

10 27-1252. Notice of complete, incomplete or denied plan

11 A. The ~~state-mine~~ inspector shall notify the operator that a
12 reclamation plan is administratively complete or incomplete within thirty
13 days after receiving the plan.

14 B. If the inspector notifies the operator that a plan is incomplete or
15 denied, the inspector shall include a written explanation stating the reasons
16 for denial including recommendations for correcting incomplete or
17 unacceptable parts of the plan consistent with the requirements of this
18 chapter. The operator must refile the corrected plan within ninety days
19 after notification that the previous plan was incomplete or denied or within
20 a time frame mutually agreed on between the operator and the ~~state-mine~~
21 inspector that would not materially affect the safety of employees or cause
22 undue hardship on an operator.

23 Sec. 86. Section 27-1253, Arizona Revised Statutes, is amended to
24 read:

25 27-1253. Approval: criteria

26 The ~~state-mine~~ inspector shall approve a reclamation plan for
27 exploration operations within sixty days after receiving a complete plan if
28 the plan provides for the reclamation of surface disturbances at the
29 exploration operations according to the following requirements, as
30 applicable:

31 1. Exploration access roads that the operator constructs and that will
32 not be part of a postexploration use shall be reclaimed in a timely manner
33 after the exploration is completed. If a governmental unit or agency will
34 accept dedication or conveyance of an access road, reclamation is not
35 required. Reclamation shall include removing culverts, restoring drainage to
36 its general predisturbance configuration, ripping the road surface to reduce
37 compaction and aid revegetation and controlling access of motorized vehicles
38 to the reclaimed area.

39 2. Holes that are drilled for aggregate exploration purposes, unless
40 completed for water monitoring, withdrawal or other use, shall be plugged,
41 sealed or capped promptly after their use is completed as prescribed by rule
42 by the department of water resources and as necessary to ensure the safety of
43 persons, domestic animals, livestock and machinery in the area.

44 3. Drill pads shall be reshaped promptly after completion of drilling
45 to prevent erosion and to establish contours that are generally compatible

1 with the adjacent areas or shall be ripped to reduce compaction and aid
2 revegetation and, if appropriate, seeded to minimize erosion.

3 4. Mud pits that are used for drilling fluids and produced waters
4 shall be reclaimed after hazardous substances are removed and disposed of, if
5 necessary, and after they are sufficiently dry by reshaping to contours that
6 are generally compatible with the adjacent areas. If it is appropriate to
7 the area, suitable growth media shall be spread and seeded over the pit area.

8 5. Exploration trenches and pits shall be backfilled and reclaimed as
9 soon as practicable as prescribed in the reclamation plan. If the trench or
10 pit will remain open, measures shall be taken to stabilize the sides to
11 address erosion control and to restrict access. Trench and pit reclamation
12 shall include backfilling, reshaping to contours generally compatible with
13 the adjacent areas and, if appropriate for the area, seeding to reestablish
14 vegetation.

15 6. Areas that have been cleared by blading with mechanized equipment
16 during exploration operations shall be reshaped after exploration is
17 completed, unless used for a postexploration use, to be generally compatible
18 with the adjacent area. Compacted areas shall be ripped to aid revegetation.

19 Sec. 87. Section 27-1254, Arizona Revised Statutes, is amended to
20 read:

21 27-1254. Beginning new exploration operations

22 New exploration operations may begin when both of the following occur:

23 1. The ~~state-mine~~ inspector approves the reclamation plan for the
24 exploration operations.

25 2. Financial assurance has been submitted to the inspector as required
26 by article 5 of this chapter.

27 Sec. 88. Section 27-1272, Arizona Revised Statutes, is amended to
28 read:

29 27-1272. Notice of complete, incomplete or denied plan

30 A. The ~~state-mine~~ inspector shall notify the owner or operator that
31 the plan is complete or incomplete within thirty days after receiving the
32 plan.

33 B. The inspector shall approve or disapprove a plan for new aggregate
34 mining units within one hundred twenty days after receiving a complete plan.

35 C. If the inspector notifies the owner or operator that a plan is
36 incomplete or denied, the inspector shall include a written explanation
37 stating the reasons for denial, including recommendations for correcting
38 incomplete or unacceptable parts of the plan consistent with the requirements
39 of this chapter. The owner or operator must refile the corrected plan within
40 ninety days after notification that the previous plan was incomplete or
41 denied or within a time frame mutually agreed on between the owner or
42 operator and the ~~state-mine~~ inspector that would not materially affect the
43 safety of employees or cause undue hardship on an owner or operator.

1 Sec. 89. Section 27-1273, Arizona Revised Statutes, is amended to
2 read:

3 27-1273. Approval; criteria

4 A. The ~~state-mine~~ inspector shall approve a reclamation plan for
5 aggregate mining units if the plan provides for reclamation measures for
6 surface disturbances that are:

7 1. Necessary to achieve a safe and stable condition suitable for the
8 postaggregate mining land use objectives stated in the reclamation plan.

9 2. Compatible with good engineering practices regarding erosion
10 control and seismic activity for the applicable seismic zone.

11 B. In evaluating the reclamation plan, the inspector shall consider
12 the technical and economic practicability of the proposed reclamation
13 measures, taking into account the site-specific circumstances at the
14 aggregate mining unit and the proposed postaggregate mining land use
15 objectives as stated in the reclamation plan, including:

16 1. Grazing and other agricultural land use objectives.

17 2. Developed water resources, water management projects and planned
18 and existing underground water storage facilities.

19 3. Fish or wildlife habitat.

20 4. Forestry.

21 5. Historic preservation.

22 6. Industrial or commercial uses, including tourism.

23 7. Recreational uses.

24 8. Residential uses.

25 9. Scientific or educational uses.

26 10. Aggregate mining or remining, except that the proposed
27 postaggregate mining use of aggregate mining or remining does not relieve an
28 owner or operator from complying with or implementing the reclamation plan
29 requirements under this chapter.

30 11. Water course channelization.

31 12. Other appropriate postaggregate mining land use objectives.

32 C. The postaggregate mining land use objective stated in the
33 reclamation plan need not be the same use of the land that existed before the
34 aggregate mining facility was located on the site.

35 Sec. 90. Section 27-1276, Arizona Revised Statutes, is amended to
36 read:

37 27-1276. Beginning new aggregate mining units

38 Beginning January 1, 2007, new aggregate mining units may begin when
39 both of the following occur:

40 1. The ~~state-mine~~ inspector approves the reclamation plan for the
41 aggregate mining unit.

42 2. Financial assurance has been submitted to the inspector as required
43 by article 5 of this chapter.

1 Sec. 91. Section 27-1292, Arizona Revised Statutes, is amended to
2 read:

3 27-1292. Aggregate mining unit or existing exploration
4 operation

5 A. The owner or operator of an existing exploration operation or a new
6 or existing aggregate mining unit shall transmit a financial assurance
7 mechanism to the ~~state-mine~~ inspector within sixty days after a reclamation
8 plan is approved. The inspector shall take final action on the financial
9 assurance mechanism within thirty days after it is received.

10 B. In determining the amount of financial assurance to be provided for
11 an existing exploration operation or a new or existing aggregate mining unit,
12 the inspector shall consider the costs of approved reclamation measures
13 stated in the reclamation plan. In computing reclamation costs, the
14 inspector shall assume that third parties will perform the reclamation
15 measures. The inspector shall reduce the amount of the required financial
16 assurance to the costs of the owner or operator performing the reclamation
17 measures if the owner or operator can demonstrate sufficient financial
18 ability to perform the necessary reclamation or if the owner or operator
19 meets the financial assurance reduction criteria established by rule.
20 Financial ability shall be established by one or more of the financial
21 mechanisms described in 40 Code of Federal Regulations section 264.143(f).

22 C. Each financial assurance mechanism for an existing exploration or
23 new or existing aggregate mining unit submitted to the inspector shall
24 provide the amount in current dollars equal to the cost to:

25 1. Perform the approved reclamation measures stated in the reclamation
26 plan on the area of surface disturbance.

27 2. Provide continued care and monitoring of the areas stated in the
28 reclamation plan for revegetation for no more than three growing seasons
29 without additional supplemental irrigation or other man-induced inputs after
30 performing the reclamation measures unless the supplemental inputs are part
31 of the postaggregate mining land use. Notwithstanding this paragraph,
32 revegetation efforts that are necessary to achieve the postaggregate mining
33 land use objective are considered adequate and complete if the owner or
34 operator has taken reasonable measures to achieve vegetative success.
35 Technical and economic practicability as it relates to site-specific
36 conditions and the proposed postaggregate mining land use shall be taken into
37 account in making that determination.

38 D. The inspector shall adjust the amount of financial assurance every
39 five years or more often as necessary to adjust for new areas of planned
40 surface disturbances or inflation or to reflect changed costs resulting from
41 substantial modifications of the reclamation plan.

Sec. 92. Section 27-1293, Arizona Revised Statutes, is amended to read:

27-1293. New exploration operation

A. Beginning January 1, 2007, the owner or operator of a new exploration operation shall furnish a financial assurance mechanism to the ~~state mine~~ inspector in an amount equivalent to two thousand dollars per acre of new surface disturbance, unless the inspector approves a cost estimate for an amount less than two thousand dollars per acre.

B. An owner or operator may provide a single financial assurance mechanism for all of its exploration operations conducted in this state.

Sec. 93. Section 27-1294, Arizona Revised Statutes, is amended to read:

27-1294. Duplication of financial assurance not required

Financial assurance is not required under this article that duplicates financial assurance that is required under other local, state or federal laws. Evidence of financial assurance under this article that would be duplicated must be filed with the ~~state-mine~~ inspector.

Sec. 94. Section 27-1296, Arizona Revised Statutes, is amended to read:

27-1296. Release of financial assurance

A. An owner or operator may apply to the ~~state-mine~~ inspector to release all or part of the financial assurance provided under this article. The application shall:

1. Describe the reclamation measures that have been performed.
2. Describe any surface disturbances proposed in the reclamation plan that have not been disturbed.
3. Contain an estimate of the costs of reclamation measures that have not been performed.

B. Within sixty days after receiving a complete application, the inspector shall release all or part of the financial assurance except for any amount that is necessary to perform the reclamation measures identified in the reclamation plan. After the reclamation measures have been performed, the remaining financial assurance shall be released, except that ten per cent shall be retained for the costs of care, monitoring and one reseeding, if necessary, for areas that have been revegetated. The inspector shall release the retained monies after a period of not more than three growing seasons after the supplemental management or other man-induced inputs have been finally removed or as otherwise provided in section 27-1292, subsection B.

Sec. 95. Section 27-1297, Arizona Revised Statutes, is amended to read:

27-1297. Rules; release, forfeiture or exercise of financial assurance

A. The ~~state mine inspector~~ DIRECTOR OF THE DEPARTMENT OF MINING shall adopt rules for:

1 1. Reviewing and acting on applications to release all or part of the
2 financial assurance under this article.

3 2. Ensuring the implementation of the reclamation plan through
4 forfeiture or exercise of the financial assurance on failure to implement the
5 reclamation plan as required by this article.

6 B. The rules shall provide for written notice to all principals and
7 sureties on the financial assurance and an opportunity for a hearing.

8 Sec. 96. Section 27-1321, Arizona Revised Statutes, is amended to
9 read:

10 27-1321. Inspections

11 Beginning January 1, 2007, the ~~state-mine~~ inspector may enter and
12 inspect, during normal business hours, any exploration operation or aggregate
13 mining facility that is subject to this chapter to determine compliance with
14 this chapter. The inspector shall give the owner or operator the opportunity
15 to have its representative accompany the inspector. Within thirty days after
16 the date of the inspection, the division shall provide to the owner or
17 operator a copy of any inspection report produced as a result of any
18 inspection of the exploration operation or aggregate mining facility.

19 Sec. 97. Section 27-1322, Arizona Revised Statutes, is amended to
20 read:

21 27-1322. Compliance orders

22 A. Beginning January 1, 2007, if the ~~state-mine~~ inspector determines
23 that a person is violating this chapter, a rule adopted pursuant to this
24 chapter or any condition of a reclamation plan approved pursuant to this
25 chapter or is causing an imminent and substantial danger to the public
26 safety, the inspector may issue an order requiring compliance either
27 immediately or within a stated period of time.

28 B. A compliance order shall state with reasonable specificity the
29 nature of the violation, a time for compliance, if applicable, and the right
30 to a hearing.

31 C. The inspector shall transmit the compliance order to the alleged
32 violator either by certified mail, return receipt requested, or by hand
33 delivery.

34 D. At the inspector's request, the attorney general may file an action
35 in superior court to enforce orders issued under this section after the order
36 becomes final. The action shall be filed in superior court in the county in
37 which the alleged violation occurred or in which the inspector maintains an
38 office.

39 Sec. 98. Section 27-1323, Arizona Revised Statutes, is amended to
40 read:

41 27-1323. Enforcement action on reclamation plan approval

42 A. The ~~state-mine~~ inspector may suspend, withdraw or revoke a
43 reclamation plan approval if the inspector determines that the facility is in
44 violation of any rule adopted pursuant to this chapter.

1 B. Any action taken under this section shall comply with the
2 requirements of title 41, chapter 6, article 10.

3 Sec. 99. Section 27-1324, Arizona Revised Statutes, is amended to
4 read:

5 27-1324. Injunctive relief; civil penalties

6 A. Beginning January 1, 2007, if the ~~state-mine~~ inspector has reason
7 to believe that a person is violating this chapter or a rule adopted pursuant
8 to this chapter or that a person is causing an imminent and substantial
9 danger to the public safety, the inspector, through the attorney general, may
10 request a temporary restraining order, a preliminary injunction, a permanent
11 injunction or any other relief necessary to protect the public safety,
12 without regard to whether the person has requested a hearing.

13 B. A person who violates this chapter or a rule, order or reclamation
14 plan approval adopted or issued pursuant to this chapter is subject to a
15 civil penalty of not more than one thousand dollars for each day of
16 violation, not to exceed fifteen thousand dollars for each violation. At the
17 inspector's request, the attorney general shall file an action in superior
18 court to recover civil penalties as prescribed by this section.

19 C. An action filed under this section shall be brought in superior
20 court in the county in which the alleged violation occurred or in which the
21 inspector maintains an office.

22 Sec. 100. Section 27-1325, Arizona Revised Statutes, is amended to
23 read:

24 27-1325. Agency order; appeal

25 A. An order issued by the ~~state-mine~~ inspector pursuant to this
26 article is final unless the defendant requests a hearing pursuant to title
27 41, chapter 6, article 10 within thirty days after receiving the order.

28 B. Except as provided in section 41-1092.08, subsection H, a final
29 agency order is subject to judicial review pursuant to title 12, chapter 7,
30 article 6.

31 Sec. 101. Section 37-904, Arizona Revised Statutes, is amended to
32 read:

33 37-904. Public lands board of review; members; powers and
34 duties; staff and officers; service of process

35 A. There is established a public lands board of review consisting of
36 the following members:

- 37 1. State land commissioner.
- 38 2. Director of the department of ~~health-services division of air and~~
39 ~~water~~ ENVIRONMENTAL quality.
- 40 3. Director of the department of ~~mines and mineral resources~~ MINING.
- 41 4. Director of the Arizona state parks board.
- 42 5. Director of the department of transportation.
- 43 6. Deputy state forester.
- 44 7. Director of water resources.
- 45 8. Director of the Arizona game and fish department.

9. As provided in subsection F, the chairman of the board of supervisors of a county in which public lands are located.

10. One county supervisor, appointed by the governor to serve at the pleasure of the governor.

B. The board shall elect one of its members to serve as chairman. The chairman shall call meetings of the board and prescribe the time and place of each meeting.

C. Members of the board are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

D. The board:

1. Shall review and approve or disapprove all rules and regulations proposed by the commissioner under this chapter.

2. May review any decision of the commissioner relating to public lands under this chapter and affirm, modify or reverse the decision.

E. The state land department shall provide the administrative staff and offices needed by the board, and the state land commissioner shall be deemed the clerk of the board upon which notices of appeal and other process shall be served.

F. The chairman of the county board of supervisors of a county in which public lands are located and which are the subject of the board action shall serve as a member of the board for the purposes of the action.

Sec. 102. Section 41-1372, Arizona Revised Statutes, is amended to read:

41-1372. Exemptions

This article does not apply to:

1. Any elected state official.

2. Chief advisors who maintain a direct, confidential and advisory relationship with:

(a) The governor.

(b) The secretary of state.

(c) The attorney general.

(d) The state treasurer.

~~(e) The state mine inspector.~~

~~(f)~~ (e) The superintendent of public instruction.

~~(g)~~ (f) A commissioner of the corporation commission.

3. An agency attorney who maintains an attorney-client relationship with either:

(a) An officer or employee of an agency acting in the exercise of the officer's or employee's duty.

(b) An elected official who is listed under paragraph 2.

4. The staff of the legislature.

Sec. 103. Repeal

Section 41-3016.21, Arizona Revised Statutes, is repealed.

1 Sec. 104. Article headings

2 A. The article heading of title 27, chapter 1, article 1, Arizona
3 Revised Statutes, is changed from "DEPARTMENT OF MINES AND MINERAL RESOURCES"
4 to "DEPARTMENT OF MINING".

5 B. The article heading of title 27, chapter 1, article 2, Arizona
6 Revised Statutes, is changed from "STATE MINE INSPECTOR" to "MINE INSPECTOR".

7 Sec. 105. Succession

8 A. As provided by this act, the department of mining succeeds to the
9 authority, powers, duties and responsibilities of the department of mines and
10 mineral resources and the state mine inspector.

11 B. This act does not alter the effect of any action or impair the
12 valid obligations of the department of mines and mineral resources and the
13 state mine inspector taken before the effective date of this act.

14 C. Administrative rules and orders adopted by the department of mines
15 and mineral resources and the state mine inspector continue in effect until
16 superseded by administrative action by the department of mining.

17 D. All administrative matters, contracts and judicial and
18 quasi-judicial actions, whether completed, pending or in process, of the
19 department of mines and mineral resources and the state mine inspector on the
20 effective date of the act are transferred to and retain the same status with
21 the department of mining.

22 E. All certificates, licenses, registrations, permits and other
23 indicia of qualification and authority that were issued by the department of
24 mines and mineral resources and the state mine inspector retain their
25 validity for the duration of their terms of validity as provided by law.

26 F. All equipment, records, furnishings and other property, all data
27 and investigative findings and all appropriated monies that remain unexpended
28 and unencumbered on the effective date of this act of the department of mines
29 and mineral resources and the state mine inspector are transferred to the
30 department of mining.

31 G. All personnel who are under the state personnel system and employed
32 by the department of mines and mineral resources and the state mine inspector
33 are transferred to comparable positions and pay classification in the
34 department of mining on the effective date of this act.

35 Sec. 106. Conditional enactment; effective date

36 A. This act does not become effective unless the Constitution of
37 Arizona is amended by vote of the people at the next general election to
38 establish a department of mining.

39 B. If the condition prescribed in subsection A is met, this act is
40 effective from and after January 2, 2011.